BLANK
PAGE

Office-Supreme Court, U.S.
FILED
MAY 21 1965
JOHN F. DAVIS, CLERK

No. 170

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,

Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,

Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,

Intervenor-Defendant-Appellee.

Appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

PAUL E. HAMER
1900 Shermer Avenue
Northbrook, Illinois
312-272-1800
Counsel for Plaintiffs-Appellants

The Scheffer Press, Inc., 118 South Clinton Street, Chicago, Illinois

BLANK PAGE

INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement of the Case	5
Questions Are Substantial	10
1. The Court Upheld the Validity of a State Statute Which Was Alleged to Have Been Repugnant to the Federal Constitution	10
Reasons for Granting the Writ	13
2. The Issuance of a Permanent Injunction Without a Hearing Deprived Plaintiffs of Due Process of Law.	13
3. The Broad Terms and Discriminatory Enforcement of the Injunction Deny Due Process and Equal Protection of the Law.	15
4. The Trial Court Denied the Plaintiffs Due Process of Law in Ruling That the Prior Dismissal for Failure to State a Cause of Action Bars All Subsequent Litigation	17
5. The Plaintiffs Were Denied Both Due Process and Equal Protection of the Law When the Court Held That a Prior Judgment in Which Some Questions Concerning the Constitutionality of a State Statute Had Been Ruled Upon Barred a Subsequent Suit Between Different Parties and Upon Different Points of the Constitutional Controversy	19
Conclusion	23

PAGE

Appendix A—Statutes Involved 1a-46a

Appendix B—Opinions:

Bowman, et al. v. County of Lake, et al., (29 Ill. 2d 268) 47a-61a

Bowman, et al. v. Lake County Public Building Commission, et al., (31 Ill. 2d 575) 61a-65a

Appendix C—Pleadings:

Complaint in Case at Bar 65a-86a

Supplemental Complaint in Instant Case 87a-102a

CITATIONS.

Brown v. Western Ry., 338 U.S. 294 18

Bologna v. Morrissey, 366 U.S. 212 3

Burton v. Wilmington Parking Authority, 365 U.S. 715 3

Cantwell v. Connecticut, 309 U.S. 626 3

Columbus & G.R. Co. v. Miller, 283 U.S. 97 3

Erie Railroad Co. v. Purdy, 185 U.S. 148 .....3, 13

First Nat. Bank of Guthrie v. Anderson, 269 U.S. 341..3, 12

Floornoy v. Weiner, 321 U.S. 253 3

Goldsmith v. Board of Tax Appeals, 270 U.S. 117 14

General Oil Co. v. Crain, 209 U.S. 211 .....3, 12

Hansberry v. Lee, 311 U.S. 32 .....17, 19

Hodge v. Muscatine County, 196 U.S. 276 15

Home Telephone & Telegraph Co. v. Los Angeles, 227 U.S. 278 18

Hughes v. United States, 71 U.S. 232 .....17, 20

Knapp v. Schweitzer, 355 U.S. 804 3

Lathrop v. Donahue, 367 U.S. 820 18

Manhattan Life Ins. Co. v. Broughton, 109 U.S. 121 17

PAGE

Miller v. Standard Oil, 104 F. Supp. 946 17

Morgan v. United States, 304 U.S. 1 14

Pittsburgh & Co., Ry. Co. v. Backus, 154 U.S. 421 15

Prudential Insurance Co. v. Cheek, 259 U.S. 530 3

Raley v. State of Ohio, 360 U.S. 423 3

Saunders v. Shaw, 244 U.S. 317 ..... 14, 18

Scott v. Donald, 165 U.S. 58 16

Western Life Indemnity Co. v. Rupp, 235 U.S. 261 19

Willner v. Committee On Character, 373 U.S. 96 14

Wilmington & Co. v. Ashbrook, 146 U.S. 279 ..... 3, 12

Winnona and St. Peter Land Co. v. Minnesota, 159 U.S. 526 15

STATUTES CITED.

Conveyancing Act (Ill. Rev. Stat., 1963, Ch. 30, Par. 157) 4, 6

Public Building Commission (Ill. Rev. Stat., 1963, Ch. 33, Par. 3301 et seq.) 4, 6

Civil Practice Act (Ill. Rev. Stat., 1963, Ch. 110, Par. 110-5) 10

Revenue Act (Ill. Rev. Stat., 1963, Ch. 120, Par. 675 & 716) 4, 8

28 U.S.C. Para. 1257 (2) 3, 5, 10

28 U.S.C. Para. 1257(3) 3

28 U.S.C. Para. 2103 3

MISCELLANEOUS.

Illinois Constitution (Present) Art. 6, Sec. 9 8

Illinois Constitution (Former) Art. 6, Sec. 18 8

Illinois Constitution Art. 9, Sec. 12 20

BLANK
PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No.

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,

Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,

Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,

Intervenor-Defendant-Appellee.

Appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

Appellants appeal from a decree of the Supreme Court of Illinois sustaining the issuance of a permanent injunction against the taxpayers of Lake County, Illinois, entered December 7, 1964 and submit this statement to show that either the Supreme Court of the United States has jurisdiction of the appeal and that several substantial questions are presented or in the alternative, that a writ of certiorari should be issued to review said decree:

OPINIONS BELOW

Four opinions are involved in the instant case. The first opinion of the Supreme Court of Illinois is reported at 29 Ill. 2d 268 (193 N.E. 2d 833). The Supreme Court upheld a finding of the lower court that the amended complaint was without equity and is set forth in the Appendix hereto (App., 47a-61a). The second opinion of the Supreme Court of Illinois is reported at 31 Ill. 2d 170 (201 N.E. 2d 109), but is not printed herein. In that case, the intervenors herein, the Lake County Bar Association, sought a Writ of Prohibition against the appellants, but the Writ was denied. The third opinion, from which this appeal is taken, is reported at 31 Ill. 2d 575 (203 N.E. 2d 129), and is printed in the appendix hereto (App., 61a-65a). In the latter case, the Illinois Supreme Court sustained the issuance of a permanent injunction against the taxpayers and ruled that it had upheld the constitutionality of the Public Building Commission Act in the case of *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* II Ill. 2d 125 (142 N.E. 2d 67). The *Adamowski* case is not printed herein.

JURISDICTION

This action was brought to enjoin the transfer of certain public monies and land from the County of Lake to the Public Building Commission, alleging *inter alia,* that the Public Building Commission Act was unconstitutional or if constitutional, that the appellees had failed to comply with the provisions of the Act. The decree of the Supreme Court of Illinois was entered on December 7, 1964. A timely petition for rehearing, which had been filed on December 21, 1964, was denied by the Illinois Supreme Court on December 28, 1964 and a notice of appeal to this Court was filed in the Illinois Supreme

Court on March 26, 1965. Jurisdiction to review this decision by direct appeal is conferred upon the Supreme Court by Title 28, United States Code, Section 1257 (2), and in the alternative, the petitioner seeks to invoke the jurisdiction of this Court under Sections 1257 (3) and 2103 of Title 28. The following representative decisions sustain the jurisdiction of the Supreme Court to review the decree on direct appeal in this case: *General Oil Company* v. *Crain,* 209 U.S. 211, 228; *Wilmington & Co.* v. *Ashbrook,* 146 U.S. 279; *1st National Bank of Guthrie Center* v. *Anderson,* 269 U.S. 341, 346; *Erie Railroad Co.* v. *Purdy,* 185 U.S. 148, 152-153 and *Scott* v. *Donald,* 165 U.S. 58, 71.

The following representative decisions sustain the jurisdiction of the Supreme Court to review the decree, in the alternative, as a Petition for a Writ of Certiorari: *Bologna* v. *Morrissey,* 366 U.S. 212; *Knapp* v. *Schweitzer,* 355 U.S. 804; *Floornoy* v. *Weiner,* 321 U.S. 253, 263; *Prudential Insurance Co.* v. *Cheek,* 259 U.S. 530, 547; *Columbus & G.R. Co.* v. *Miller,* 283 U.S. 97, 98; *Cantwell* v. *Connecticut,* 309 U.S. 626, 310 U.S. 296; *Raley* v. *State of Ohio,* 360 U.S. 423-435 and *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715, 717.

QUESTIONS PRESENTED

The following questions were presented in the case at bar:

1. Does the state statute impair the obligations ensuing out of the contracts of a municipal corporation in contravention of Section 10 of Article 1 of the Federal Constitution?

2. Did the proceedings wherein the trial court issued a permanent injunction without an opportunity to answer

or to defend violate the due process clause of the Fourteenth Amendment to the Federal Constitution?

3. Did the issuance and discriminatory enforcement of a permanent injunction which affectively precludes all taxpayers in the county from questioning the validity of their taxes, infringe that provision of the Fourteenth Amendment to the Federal Constitution which states that no person shall be deprived of property without due process of law, as well as denying the taxpayers equal protection of the laws?

4. Were the appellants denied due process of law in contravention of the provisions of the Fourteenth Amendment by the ruling of the trial court that a judgment in a prior suit which had been dismissed for lack of jurisdiction barred subsequent litigation?

5. Were the Appellants denied due process of law and equal protection of the laws under the Federal Constitution when the Court held that a prior judgment of the said court in which some questions concerning the constitutionality of a state statute had been ruled upon precluded consideration of different points of constitutional controversy in a subsequent suit between different parties?

STATUTES INVOLVED

Public Building Commission Act (Ill. Rev. Stat., Chap. 33, Paras. 3301 *et seq.*) and applicable provisions of the Revenue Act. (Ill. Rev. Stat., Chap. 120, Paras. 675 and 716), the Conveyancing Act. (Ill. Rev. Stat., 30, Para. 157) and portions of the Illinois Constitution are set forth in the appendix hereto (App., 1a-47a).

STATEMENT

(a) The Manner In Which The Federal Questions Were Presented

This litigation was instigated to enjoin the proposed transfer of funds and to seek the return of certain public monies and lands theretofore transferred by the County of Lake hereinafter called the "County" to the Lake County Public Building Commission, hereinafter referred to as the "Commission". The complaint and the supplemental complaint alleged that the Public Building Commission Act was unconstitutional or, if constitutional, that the County and the Commission had failed to comply with the applicable provisions of the Act. The allegation that the Act in question was unconstitutional was raised by the pleadings submitted in the trial court. The trial court refused to rule on the pleadings and summarily allowed the counterclaim for an injunction filed by the appellees. However, the Illinois Supreme Court considered all of the pleadings and ruled that: "The Constitutionality of the Public Building Commission Act was upheld in *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* II Ill. 2d 125, and need not be further considered. The plaintiffs additionally contend that the permanent injunction has deprived them of a full hearing guaranteed by the due process clauses of the Federal and State Constitutions and that it has deprived them of their certain remedy guaranteed by Section 19 of Article II of the State Constitution" (App., 63a). In view of these facts, the appellants assert that the rulings of the court bring the case within the purview of 28 U.S.C. 1257 (2).

(b) The Material Facts Of The Case

The Public Building Commission Act was purportedly adopted in July, 1955 by the Illinois General Assembly.

Shortly thereafter, the States Attorney of Cook County brought a *quo warranto* proceedings to challenge the constitutionality of the Act. The defendants therein (the Public Building Commission of Chicago) tested the sufficiency of the complaint by a motion to strike, which the lower court allowed and dismissed the cause. The Illinois Supreme Court on March 20, 1957 found that the Act was "not subject to any of the constitutional objections raised", except that the leases executed by a municipality with a commission would create a municipal indebtedness within the definition and limitations of Section 12 of Article IX of the Illinois Constitution and therefore the Act violates the Constitution requirement that the principal debt of a municipal corporation must be paid within twenty years. The legislature still had not amended this portion of the statute at the time of this litigation.

In 1956, the Board of Supervisors of Lake County adopted a resolution whereby the Board agreed that if the taxpayers were to eliminate the offices of township tax collector, the additional county revenue would be used to reduce the county tax levy. The taxpayers eliminated the office of township tax collector in 1956. In 1958, the taxpayers of Lake County defeated a referendum calling for the issuance of general obligation bonds for the purpose of erecting a new court house.

Pursuant to the terms of the Act in question, the County conveyed fee simple title to certain public lands to the Commission on February 6, 1961. On August 4, 1961, the Illinois Legislature amended the Act in question and the Conveyancing Act (Ill. Rev. Stat. Chap. 30, Para. 157) (App., 17a and 43a) to permit conveyances between municipalities providing the conveyance contains a reverter clause, and further amended the Act by adding a new paragraph 3314.1 (App., 20a-23a) to provide for interim financing.

On January 7, 1963 the appellant filed a class action on behalf of all Lake County taxpayers alleging that the levy of certain taxes for the years 1957 through 1961 were illegal. The trial court allowed a motion to dismiss, ruling that a declaratory judgment was not the proper remedy since the litigation involved taxes and should properly be before the County Court, which then had exclusive jurisdiction over tax matters (App., 35a). Pursuant to leave of court, ar amended complaint in equity was filed. On May 8, 1963, the trial court dismissed the matter on the grounds that the complaint was without equity, *i.e.* certain necessary allegations which would give jurisdiction to a court of equity had been omitted. The trial court refused to grant leave to amend the complaint and the appellants appealed to the Illinois Supreme Court, who affirmed the decision by stating that "The trial court was completely correct in his finding that the amended complaint was without equity" (App., 61a). A timely petition to rehear was filed and denied on November 26, 1963.

The same day, some four hours prior to the wire service announcement of the denial of the petition to rehear and quite by coincidence, the appellants filed a new taxpayers class action. The allegations in the new action was based on the earlier decision which pointed out wherein the former amended complaint had been defective. The essence of the relief sought was the restoration of public funds granted to the Commission by the County, the recovery of title to public lands transferred by the County to the Commission, a finding that the Public Building Commission Act was unconstitutional or in the alternative, a finding of noncompliance with the valid provisions of the Act, a finding that the entire tax levies for corporate purposes since 1957 are illegal and void and for an accounting. The complaint also contained allegations re-

garding fraud, irreparable injury, the fact that the illegal taxes now created a cloud upon title, allegations which the Illinois Supreme Court has indicated were previously missing and necessary to invoke the jurisdiction of the court (App., 65a-86a). The new complaint also alleged that the taxpayers had attempted to utilize the applicable provisions of the Revenue Act, (Ill. Rev. Stat. 1961, Chap. 120, paras. 675 and 716—App., 35a-41a), as suggested by the Illinois Supreme Court, but they had proven inadequate, since the taxes for the year 1962 had not been paid under protest and that the time for filing written objections had expired. It was also pointed out that under Illinois case law, each new tax year was a new and separate cause of action and that a new tax year had now intervened. The new complaint also asserted that the Illinois Constitution had now been amended by deleting Article 6, Section 18 thereof, giving the Circuit Courts original jurisdiction in proceedings for the collection of taxes and assessments (App., 35a). The appellees filed a motion to dismiss said complaint.

The Lake County Bar Association, hereinafter referred to as the "Association", then sought an original writ of prohibition to prevent the circuit court from exercising jurisdiction over the case. The writ was denied. (*People* v. *Circuit Court of Lake County,* 31 Ill. 2d 170).

During the pendency of the litigation involving the writ, which lasted over five months, an anonymous threat was made on the life of the named appellant to either withdraw the suit or face the consequences (R. 121).

Over the objection of the appellants, the Association was permitted to intervene. The appellees withdrew their motion to dismiss and joined with the intervenors in filing an answer to the complaint and filing a counter-claim

seeking an injunction on the grounds that the new complaint was vexatious and harrassing. The appellants filed a reply to the answer of the appellees, and filed a motion to dismiss the counter-claim. Over the objections of the appellees, the appellants obtained a court order to take the depositions of certain members of the Commission and the revenue bond consultant. Based upon the information discovered in the examination of the records of the Commission and the depositions, the appellants prepared a supplemental complaint and obtained a substitute complainant in view of the threat on the life of the named taxpayer. By one of the counts in the supplemental complaint, the appellants sought a mandamus to compel the levy of the tax required by the Public Building Commission Act to be levied (App. 96a-97a) in view of the fact that the County, had by resolution, abated the said tax and the appellants also requested a trial by jury as to that Count.

On August 8, 1964, the appellants served notice that on August 13, 1964 they would appear and request leave to file a supplemental complaint to substitute certain complaining parties and to request a summary judgment as to Count III of the complaint on the grounds that the answer to the complaint admitted the deed to the public lands did not contain the reverter clause required by law (R., 163 and 186).

On August 13, 1964, pursuant to said notice counsel appeared, but the trial court refused to hear any argument on the motions upon which the notice had been served. Instead, the court directed appellant's counsel to argue his motion to strike the counter claim. This counsel advised the court that he had not received notice, as required by the court rules, that the motion to dismiss the appellees' counter claim would be argued and therefore

he was not prepared to argue the question. Counsel urged that the court hear argument on those motions of the appellants which had been set for that date. The trial court ordered appellant's counsel to argue the motion to dismiss and upon completion of the argument, signed an order denying the motion to dismiss and each of the motions filed by the appellants without argument or hearing on any of those other motions. The court, without giving appellants an opportunity to answer the counter-complaint immediately signed a decree permanently restraining the taxpayers of Lake County from further prosecution of this case "and from the institution of vexatious or harassing litigation of any issues raised and decided or governed in principle by the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268" (R., 169-170). Appellants filed a motion to rehear which the trial court struck on the ground that the appellants had failed to file a certificate showing service of notice that had in fact been made upon opposing counsel pursuant to Illinois Supreme Court 5 (Ill. Rev. St., Chap. 110, Para. 5).

An appeal was perfected to the Illinois Supreme Court. The Supreme Court allowed the supplemental complaint to be made a part of the record on appeal, and affirmed the issuance of the permanent injunction. Upon timely petition to rehear, the opinion was modified and it is from this modified opinion that this appeal is taken or in the alternative, that the Writ of Certiorari is sought.

THE QUESTIONS ARE SUBSTANTIAL

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. 1257 (2). The appellants questioned the validity of the Public Building Commission Act enacted by the Illinois Legisla-

ture on the grounds that the Act was repugnant to the Constitution of the United States. The Illinois Supreme Court upheld the validity of the Act.

On October 10, 1956, the County adopted a resolution which provided that if the office of township collector were to be eliminated at an election to be held in November, 1956, the resultant saving would be used to reduce the tax burden of the taxpayers of Lake County. Acting in reliance upon this commitment, the electorate eliminated the office at the 1956 election.

The appellants alleged that the 1956 resolution was a contractual promise of the County and that the accumulation of public funds was contrary to the aforementioned resolution and therefore, that the acceptance of these funds and lands by the commission sanctions a statute impairing the obligation of contract. While the Illinois Supreme Court in its first opinion (App., 59a), seemed to indicate that these allegations were meritorious, it stated that since the theory was not pursued by argument and citation of authority, it was waived. This theory was then set forth in the complaint and supplemental complaint in addition to other Federal and State constitutional questions. The Illinois Supreme Court in the instant case, recognized that several constitutional questions were presented but stated that they had upheld the constitutionality of the Act in a prior decision and it "need not be further considered". (App. 63a). A cursory examination of the complaint and Supplemental Complaint (App., 65a-102a) clearly show that other Federal Constitutional questions were also raised and the constitutionality also sustained. Thus, it appears that this Honorable Court has jurisdiction to hear the matter by appeal pursuant to 28 U.S.C. 1257 (2), since the Illinois Court has clearly sustained the Constitutionality of the statute in question.

In its opinion (App., 61a) in the first *Bowman* case, the Illinois Supreme Court ruled that the appellants had failed to state a cause of action in equity and affirmed that the "amended complaint was without equity". In a later opinion (App., 61a-65a), the court sustained the issuance of the injunction which precludes the appellants from proceeding in their case, which is at issue and ready for trial, on the grounds that the issues raised and decided or governed in principal in the second case were identical to those issues raised and decided in the first case (App., pp. 62a-63a). The only issue raised and decided in the first *Bowman* case was that the complaint failed to state a cause of action.

In upholding the issuance of the injunction, the Illinois Supreme Court upholds the prior dismissal and is giving effect to an Act which the appellants have alleged as being repugnant to the Federal Constitution. In *General Oil Co.* v. *Crain,* 209 U.S. 211, the state court had dismissed a suit for want of jurisdiction and this Court held that it had jurisdiction of the matter since an allegation had been made that a state statute violated the Federal Constitution, saying at page 228: "It being then the right of a party to be protected against a law which violates a constitutional right, whether by its terms or in the manner of its enforcement, it is manifest that a decision is reviewable by this court. *Wilmington & Co.* v. *Ashbrook,* 146 U.S. 279". Further, in *First National Bank of Guthrie Center* v. *Anderson,* 269 U.S. 341, at page 346 this Court stated: "Whether a pleading sets up a sufficient right of action of defense, grounded on the Constitution or the law of the United States, is necessarily a question of federal law; and where a case coming from a state court presents that question, this court must determine for itself the sufficiency of the allegations displaying the right or de-

fense is not concluded by the view taken of them by the state court. (Citations)"

The Illinois Supreme Court stated in its last opinion that the constitutionality of the statute in question had been upheld in another case (*Adamowski* v. *Public Building Commission*, Ill. 2d 125) *"and need not be further considered"* (emphasis supplied). In *Erie Railroad Co.* v. *Purdy*, 185 U.S. 148, this Court at page 153 said: "So, if the highest court of the State, by its final judgment, sustains the validity of a state enactment drawn in question there as repugnant to the constitution, treaties or laws of the United States, or denies a right, privilege or immunity specially set up or claimed in that court for the first time under the Constitution or any treaty, statute or authority exercised under the United States, this court could review that judgment, although no Federal question was distinctly raised or insisted upon in the trial court".

The appellants have made sufficient allegations in both the complaint and the supplemental complaint to show that the statute in question is repugnant to the Federal constitution, and the State Supreme Court upheld the validity of the Act.

REASONS FOR GRANTING THE WRIT

Having established sufficient grounds for the direct jurisdiction of this Court, the appellants contend in the balance of the questions, that the decree below violates the provisions of the 14th Amendment to the Federal Constitution, and therefore, that in the alternative, there is reason for this Court to issue a Writ of Certiorari in this cause. The second question arises from the fact that on August 13, 1964, the trial court refused to hear argument of the appellants on any of the motions pending

before the court, except the motion of the appellants to dismiss the counterclaim of the appellees. Counsel for the appellants was forced to argue the motion even though he advised the trial court that he was not prepared to do so, since he had not received any notice of the motion as required by the local court rules. The trial court denied the motion to dismiss and immediately *without a hearing,* without the introduction of any testimony or any evidence, or *without an opportunity to defend or answer* the allegations of the counterclaim, entered a *permanent* injunction which enjoins the taxpayers of Lake County from proceeding with the trial of a case which was now at issue. To cite case law in support of the proposition that the issuance of a permanent injunction without a hearing or opportunity to be heard is a violation of the due process clause of the Fourteenth Amendment would be a work of supererogation. (See *Willner* v. *Committee On Character,* 373, U.S. 96; 103-106; *Goldsmith* v. *Board of Tax Appeals,* 270 U.S. 117, 123; *Morgan* v. *United States,* 304 U.S. 1, 18-19 and *Saunders* v. *Shaw,* 244 U.S. 317, 319).

The lack of opportunity to answer or defend was brought to the attention of the Illinois Supreme Court in the briefs and oral argument and the violations of the State and Federal Constitutions were exhaustively argued.

In response, the Illinois Supreme Court stated that "the record is entirely silent as to their reasons for having failed to file an answer to the counterclaim". (App., 63a). The record is silent because the appellants were not given the opportunity to answer. Having denied appellants motion to dismiss the counterclaim, the trial court summarily entered its decree without opportunity for the appellants to deny the allegations of fact, to answer the charges made, to set forth its affirmative defenses, or to

be heard and have their day in court. Therefore, the appellants submit that the answer to the second question should be in the affirmative and that this Court should find that the appellants were denied due process of law.

Turning to the third question, this Court will note that the injunction prohibits each and every taxpayer of Lake County from raising "any issue raised or decided or *governed in principle* by the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d, 268 (emphasis supplied) (App., 62a-63a). The appellants contend that this decree is too broad and subjects the taxpayers to possible contempt of court charges in the event a taxpayer inadvertently raises a issue in a tax objection which was raised or decided of *"governed in principle"* in the prior case. What does "governed in principle" mean? The original *Bowman* case merely decided that the complaint did not state a cause of action. The appellants aver that the decree denies them due process of law in that they risk violation of the injunction in any attempt to file any tax objections in the future, In *Hodge* v. *Muscatine County,* 196 U.S. 276, 281 this Court states: "If the taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character, or before a tribunal provided by the State for the purpose of determining such questions, due process of law is not de ied." It was held by this court in *Pittsburgh & Co., Ry. Co.* v. *Backus,* 154 U.S. 421, 426, that on a tax objection hearing before judgment, with full opportunity to present the evidence and the arguments which the party deems important, is all that can be adjudged vital. To the same effect was the ruling of this Court in *Winnona and St. Peter*

Land Co. v. *Minnesota,* 159 U.S. 526, 537. These cases clearly show that even in tax matters, the taxpayer must be given the opportunity to present evidence and argument before the tax becomes final. The appellants contend that the decree can and does effectively preclude all taxpayers in the county from questioning the validity of their taxes, in contravention of the due process clause. The language of the injunction is so broad and vague that it clearly invites discriminatory enforcement. One of the issues raised in the instant case was that the County had levied taxes in excess of its actual financial needs and had thus accumulated an illegal surplus. This identical issue was raised by a tax objection filed by the Northwestern Railroad Company, a taxpayer in Lake County. That case, being case number 1600-63 in the County Court of Lake County is now pending before said court and the decree in question has not been enforced against them. In view of this fact, the appellants contend that there has also been a discriminatory enforcement of the decree denying them equal protection of the laws.

The ruling of the Illinois Supreme Court cannot even be sustained on adequate non-federal grounds and based on the opinion of this court in *Scott* v. *Donald,* 165 U.S. 58, the appellants aver that the Court has jurisdiction to examine these additional questions, for at page 71 of that case this court said; "Although the question of the jurisdiction of the court below has not been certified to us in the manner provided by the fifth section of the Judiciary Act of March 3, 1891, yet as the case is before us, in a case in which the law of the state is claimed to be in contravention of the Constitution of the United States under another clause of that statute we have jurisdiction of the entire case and of all questions involved in it. (Citations)".

The fourth question is whether or not a judgment in a prior suit wherein a suit was dismissed for failure to state a cause of action, bars a subsequent suit based upon the same set of facts in which the new complaint now states a cause of action? If the answer is in the affirmative, the appellants aver that there has then been a denial of due process of law. The Illinois Supreme Court affirmed the dismissal of the original suit on the grounds that the appellants had failed to state a cause of action. The appellants had no choice except an appeal, since the trial court refused to permit the further amendment of the complaint. The Illinois Supreme Court affirmed the decree barring the raising of any issues raised and decided in the prior case. Again, the appellants aver that the only issue in the original case was, whether or not the complaint stated a cause of action. If it did not state a cause of action, then the court correctly decided that it was without jurisdiction to hear the matter. However, it is a fundamental principle of law, that if a defective pleading can be cured, then a prior ruling that the complaint was defective does not preclude the plaintiff from filing a new complaint in which the defect has been cured. The principal is so fundamental as to warrant but few citations in support thereof: *Hansberry* v. *Lee,* 311 U.S. 32, 40; *Miller* v. *Standard Oil Co.,* 104 F. Supp. 946, 948 and *Manhattan Life Insurance Company* v. *Broughton,* 109 U.S. 121. In *Hughes* v. *United States,* 71 U.S. 232, 237, this Court said: "The petition was dismissed for want of jurisdiction and the absence of proper parties so far as it relates to the special relief sought by the suit—the vexation and surrender of the patent and it was dismissed on the grounds that it was defective, uncertain and insufficient in the statement of the cause of action. It requires no argument to show that judgment like these are no bar to the present suit. In order that

a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases, and must be determined on its merits. If the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit (Citations)".

In the recent case of *Lathrop* v. *Donohue*, 367 U.S. 820, in which the factual situation is analogous to the case at bar, Justice Black, in a dissenting opinion said at pages 868-869: "The opinions of the Wisconsin courts in this case indicates that the laws of the state—as do the laws in most civilized jurisdictions—permit amendments and clarifications of complaints where defects exist in the original complaint which can be cured. And even if Wisconsin laws were to the contrary, it is settled by the decisions of this Court that a federal right cannot be defeated merely on the ground that the original complaint contained a variable defect (*Brown* v. *Western Ry. of Alabama*, 338 U.S. 294)". The appellants therefore aver that the ruling of the trial court in holding that a judgment in a prior suit which had been dismissed a suit for lack of jurisdiction barred a subsequent suit, has denied the appellants due process of law. In *Saunders* v. *Shaw*, 244 U.S. 317, 320 this court states: "The denial of the right given by the Fourteenth Amendment need not be by legislation," and cite the *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278. In the latter case, at page 286, this Court said: "To the contrary, the provisions of the Fourteenth Amendment as conclusively fixed by previous decisions are generis in their terms, are addressed,

of course, to the State but also to every person whether natural or judicial who is repository of state power". Thus, the appellants that even the judiciary is subject to the limitations set forth in the Fourteenth Amendment. Further, in *Hansberry* v. *Lee*, 311 U.S. 32, the appellant therein alleged that the application of the doctrine of *res judicata* to a representative suit had denied him due process of law. At page 40 this court said: "State courts are free to attach such descriptive labels to litigation before them as they may choose and to attribute to them such consequences as they think appropriate under state constitutions and laws, subject only to the requirements of the Constitution of the United States. But when the judgment of a state court, ascribing to the judgment of another court the full force and effect of *res judicata*, is challenged for want of due process, it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the constitution prescribes. *Western Life Indemnity Co.* v. *Rupp*, 235, U.S. 261, 273".

The appellants are thus asking that this Honorable Court examine the complaint and Supplemental complaint herein to determine whether or not they have stated a cause of action. It is for this reason that the pleadings are set forth in the Appendix at pages 65a to 102a.

The fifth question appears at the outset to be a matter of semantics. There is a growing practice which is prevelant throughout the judicial systems of the several states, to have a public official, *e.g.* the Attorney General, the States' Attorney, etc., file a "friendly" or "dummy" suit to test the "constitutionality" of a new statute of im-

portance. Such suits seem to attempt to create a blanket of constitutionality under which the statute may be forever hidden from the searching eyes of the law. *Adamowski* v. *Public Building Commission,* II Ill. 2d 125 was such a case.

In the instant case, the Illinois Supreme Court ruled that the constitutionality of the statute under consideration here had been upheld in the *Adamowski* case and "need not be further considered". A careful reading of the case as reported in II Ill. 2d, 125 (142 N.E. 2d 67) reveals that the court held that the statute authorizing the public building commissions to lease buildings acquired and constructed by them to municipal corporations for any period of time not to exceed forty years, creates a present debit for the aggregate of all rentals for term of lease and violates constitutional requirement that principal of debt by municipal corporations be paid in twenty years. (Ill. Const. Art. 9 Sec. 12). The statute still provides for forty year lease in contravention of the Illinois Constitution. A further analysis of the *Adamowski* case reveals that the constitutional questions raised and decided in the *Adamowski* case are not identical to the ones set forth in the complaint and supplemental complaint herein. Does a prior judgment of a court in which some element of the constitutionality of the state statute had been upheld bar a subsequent suit in a justiciable controversy, between different parties, in a different proceeding and upon different points of constitutional controversy? The appellants contend the answer is in the negative. The decision of this Court in *Hughes* v. *United States,* 71 U.S. 232, 237 alluded to under the fourth question would also be applicable to this question, *a fortiori,* since a comparison of *Adamowski* case and the instant case reveal that the proceedings were not between the same parties and

that the points of controversy were not the same. As a matter of fact, the statute in question has been amended several times since the decision in the *Adamowski* case and one portion (Para. 3314.1 at App., 20a-23a), was adopted in 1961 and was not even in existence at the time of the *Adamowski* case which was a 1957 decision. Thus, the appellants aver that the assertion that the prior judgment in the *Adamowski* case in which some element of the constitutionality of the state statute was upheld barred a subsequent suit in a different proceeding, between different parties upon different points of constitutional controversy, denied the appellants the protection of the due process and equal protection clauses of the Federal Constitution.

Finally, the appellants urge that the following issues are so substantial as to require plenary consideration or that the following are additional grounds or reasons for granting the writ:

(1) The decision herein directly affects several hundreds of thousands of taxpayers in Lake County, Illinois, and the statute, if upheld, will also affect millions of taxpayers throughout the State of Illinois.

(2) The rapid growth of the use of "dummy" or "friendly" suits to determine the constitutionality of a statute so as to preclude subsequent attacks upon the constitutionality of the Act upon other and different grounds or upon a different factual situation is a subtle erosion of fundamental legal principle.

(3) The result reached below will result in undue hardships on the hundreds of thousands of taxpayers in Lake County.

(4) The decision is not in accord with the applicable decisions of this court and is contrary to the

basic fundamentals of jurisprudence established by the great mass of case law.

(5) The record on appeal is totally devoid of any evidentiary support so as to render the decision unconstitutional under the due process clause of the Fourteenth Amendment.

(6) The question presented is of major importance because of its potential applicability to every taxpayer who seeks to file a tax objection pursuant to the Illinois Statutes.

(7) The error of the lower court represents a gross miscarriage of justice.

(8) The broad terms of the injunction are unduly harsh in its impact on the taxpayers, since to file a tax objection, a taxpayer must run the risk of being held in contempt of court for violating the injunction.

By way of a summation, the appellants aver that a Federal Constitutional question has been properly raised in the lower court by the pleadings; that the validity of a statute has been drawn into question as being repugnant to the Federal Constitution; that the Illinois Supreme Court upheld the validity of the statute in question; that the issuance of a permanent injunction without a hearing or opportunity to be heard violates every basic principal underlying the judicial system of these United States; that the issuance and discriminatory enforcement of the broad and indefinite terms of the injunction has and will deny the taxpayers due process of law; that the prior dismissal of litigation for failure to state a cause of action does not preclude a subsequent action where the defect has been curred; and finally that the prior ruling of a court in which some phase of the constitutionality of a particular statute has been ruled upon does not pre-

clude a subsequent action, raising different points of constitutional controversy or from testing the constitutionality of subsequent amendments to the particular statute. It is not easy to contemplate constitutional issues more basic or fundamental than those raised in this appeal. Their determination, one way or the other, will have a definitive, far reaching and long enduring impact for generations to come.

CONCLUSION.

For the reasons set forth above, this Court has jurisdiction of the appeal and the questions herein are so substantial and of such a compelling public importance so as to be accorded plenary consideration with briefs on the merits and oral argument for their resolution; that some of the questions can be resolved by a reversal of the decree below so as to vacate the decree and remand the case for further proceedings on the case now pending before the trial court; that the court should adjudicate that the statute is unconstitutional and should reverse the final decree after briefs and oral argument or in the alternative, that this Court should treat this document as a petition for a writ of Certiorari and should grant this petition for a Writ of Certiorari.

Respectfully submitted,

PAUL E. HAMER
Counsel for Plaintiffs-Appellants

BLANK PAGE

APPENDIX A.

PUBLIC BUILDING COMMISSION

3301. Citation of Act

This Act shall be known and may be cited as the Public Building Commission Act. 1955, July 5, Laws 1955, p. 905, ¶ 1.

3302. Finding and declaration of legislature

It is hereby found and declared that there exist in many county seats within this State inadequate and outmoded public buildings and facilities in use in the conduct of local government by the various branches, departments and agencies thereof; that in many cases, by reason of the age of such public buildings and the increased activities on the part of both the citizen and his local government, they are no longer adapted or adequate to meet the needs of the growing population; that as a consequence thereof there are many counties, cities, and other branches and agencies of government within this State which are compelled to spend large sums of money annually in the rental, operation and maintenance of additional building space to house the various branches, departments and agencies of government to meet this ever increasing need; that as a result thereof, in many of the cities, counties, and other municipalities within this State, the public buildings housing the various branches, departments, and agencies of government are widely scattered throughout the locality, thereby creating confusion and considerable waste of time and effort on the part of citizens conducting ordinary business with the various branches and agencies

of government and thereby creating reduced efficiency of operation in the necessary intergovernmental activities of the various branches and agencies of government; that many public records, wills, conveyances, vital statistics, court decrees, and other similar documents in use in the conduct of daily business, are now filed in many poorly protected and overcrowded spaces and at widely separated locations by reason of the lack of an adequate public building or buildings; that these conditions impair the efficient, economical and indispensable governmental functions of the various branches and agencies of government and that, in order to eradicate these conditions, it is hereby found and declared to be necessary and desirable to make possible the construction, acquisition, or enlargement of buildings to be made available for use by governmental agencies with the intent and purpose of centralizing, insofar as is practicable, the activities of the different branches of government; and that the eradication of these conditions and the construction, acquisition or enlargement of such public building or buildings, in the manner hereinafter provided in this Act, is hereby declared to be a public use essential to the public interest. 1955, July 5, Laws 1955, p.905 ¶ 2.

3303. Definitions

The following terms, wherever used, or referred to in this Act, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a) "Commission" means a Public Building Commission created pursuant to this Act.

(b) "Commissioner" or "Commissioners" shall mean a Commissioner or Commissioners of a Public Building Commission.

(c) "County seat" means a city, village or town which is the county seat of a county.

(d) "Municipal corporation" includes a county, city, village, town, (including a county seat), park district, school district, board of education, sanitary district, and any other municipal body or governmental agency of the State.

(e) "Governing body" shall include a city council, county board, or any other body or board, by whatever name it may be known, charged with the governing of a municipal corporation.

(f) "Presiding officer" shall include the mayor or president of a city, village or town, the presiding officer of a county board, or the presiding officer of any other board or commission, as the case may be.

(g) "Oath" shall mean oath or affirmation. 1955, July 5, Laws 1955, p.905, ¶ 3.

3304. Resolution of governing body of county seat—Necessity of commission—Name—Publication of resolution—Filing

The governing body of any county seat or the county board of any county may, by resolution adopted by a majority of its members, determine that there is need and that it is in the best interest of the public that a Public Building Commission be organized to exercise the powers and authority prescribed by this Act and it shall therein set forth the name of the Public Building Commission be created hereunder, provided, however, that the words "Public Building Commission" shall form part of its name. The presiding officer of the county seat or county board adopting the resolution shall, within 10 days after

the date of adoption, cause a copy of the resolution to be published once in a daily newspaper published in the county seat and if there be no newspaper published in that county seat, then in a newspaper published in the county having a circulation in that county seat. Any municipal corporation which has the power of taxation under the laws of this State and any part of whose area of jurisdiction lies within the territorial limits of that county seat may join in the organization of the Public Building Commission in the manner hereinafter set forth in this section. The governing body of any municipal corporation meeting the foregoing requirement and desiring to join in the organization of the Public Building Commission, shall, by a majority vote of its members and within 45 days from the date of such publication, adopt a resolution to that effect. The presiding officer of each municipal corporation adopting such a resolution signifying its desire to join in the organization of the Public Building Commission, shall, within 15 days after the date of adoption thereof, transmit a copy of the resolution duly certified by the proper officer of that municipal corporation to be true and correct, to the presiding officer of the county seat or county board adopting the original resolution.

Within the 10 day period following the expiration of 60 days after the date of publication of the original resolution, it shall be the duty of the presiding officer of the county seat or county board adopting the original resolution to file in the office of the Recorder of Deeds in and for that county under one cover a certified copy of the resolution adopted by such county seat or county board together with a certificate by the publisher of the newspaper of the publication of said resolution and the date of publication and all of the certified copies transmitted to him as hereinabove provided by the municipal corpo-

rations, if any, joining in the organization of the Public Building Commission.

Upon such filing in the office of the Recorder of Deeds the Public Building Commission shall be deemed to be organized as a municipal corporation and body politic.

There shall not be more than 1 Public Building Commission in any county. 1955, July 5, Laws 1955, p. 905, ¶4; 1957, May 16, Laws 1957, P. 178 ¶1.

3305. Commissioners—Appointment—Certificate of appointment—Number of Terms of office—Vacancies

Within 30 days after the filing of the office of the Recorder of Deeds of the resolution or resolutions organizing the Public Building Commission, the presiding officer of the county seat or county board adopting the original resolution and the presiding officers of the municipal corporations, if any, joining in the organization of the Public Building Commission shall appoint Commissioners in the manner hereinafter provided. All appointments shall be made with the advice and consent of the governing body of the municipal corporation whose presiding officer makes the appointment.

Within 10 days after the appointment of the commissioners by the respective presiding officers, with the advice and consent of the respective governing bodies, as aforesaid, each of such presiding officers shall transmit to the presiding officer of the county seat or county board which adopted the original resolution, a certificate of such appointment. The presiding officer of the county seat or county board shall cause all such certificates of appointment, including a certificate of the appointments made by the presiding officer of the county seat or county board which adopted the original resolution, to be bound

under one cover and filed in the office of the Recorder of Deeds in and for said county. Upon such filing, the persons so appointed shall constitute the Board of Commissioners of the Public Building Commission and upon taking the oath of office as hereinafter provided shall be deemed to have qualified and be empowered to exercise the powers and authority prescribed in this Act.

The Board of Commissioners shall in all cases consist of not less than 5 members and in such instances as there may be more than 5 members as herein provided, the Board of Commissioners shall consist of an odd number.

If the county seat alone organizes the Public Building Commission, the presiding officer of the county seat shall appoint 5 Commissioners.

If the county board alone organizes the Public Building Commission, the presiding officer of the county board shall appoint 5 Commissioners.

If any one municipal corporation shall join with the county seat or county board in the organization of the Public Building Commission then and such event the presiding officer of the county seat or county board adopting the original resolution shall appoint 3 Commissioners and the presiding officer of the municipal corporation joining in the organization of the Public Building Commission shall appoint 2 Commissioners.

If two or more municipal corporations, in addition to the county seat or county board adopting the original resolution, shall join with the county seat or county board in the organization of the Public Building Commission then and in such event the presiding officers of the municipal corporations joining in organization shall each appoint 1 Commissioner and the presiding officer of

the county seat or county board adopting the original resolution shall appoint such number of commissioners as shall exceed by one the aggregate number appointed by the presiding officers of the municipal corporations joining in the organization of the Commission.

The initial terms of such Commissioners shall be for 5, 4, 3, 2 and 1 year, respectively, and in such cases as there may be more than 5 Commissioners the initial terms of Commissioners in excess of 5 Commissioners shall be on a descending scale of 5, 4, 3, 2 and 1 years, as there are Commissioners in excess of 5. The length of the terms of the first Commissioners shall be determined by lot at their first meeting. The initial terms of office of Commissioners who are to hold office for terms of 1, 2, 3, 4 and 5 years, respectively, shall continue until that September 30th which next follows the expiration of the periods of 1, 2, 3, 4 and 5 years, respectively from the date of the filing of the certificates of appointment in the office of the Recorder of Deeds, as aforesaid, and until their successors are appointed and qualify by taking their oath of office.

At the expiration of the term of each of the Commissioners, and of each succeeding Commissioner, or in the event of a vacancy, resignation, removal or refusal to act, the presiding officer of the municipal corporation, who made that Commissioner's appointment in the first instance, shall appoint a Commissioner, in the manner hereinabove provided, to hold office, in the case of a vacancy occurring for whatever reason, for the unexpired term, or in the case of expiration, for a term of 5 years, and until his successor is appointed and has qualified. Each such appointment shall become effective upon the filing by the presiding officer making the appointment of a certificate of the appointment in the office of the Recorder of Deeds for that county. Any Commissioner may be appointed to succeed himself.

1955, July 5, Laws 1955, p. 905, ¶5; 1957, May 16, Laws 1957, p. 178, ¶1.

3306. Oath—Qualifications of commissioners—Interest in contracts—Disclosure

Each person appointed as a member of the Board of Commissioners shall qualify by taking and subscribing to an oath to uphold the Constitution of the United States and of the State of Illinois and to well and faithfully discharge his duties, which oath shall be filed with the Secretary of the Commission.

Commissioners shall be persons experienced in real estate management, building construction or finance. The fact that a person is an officer or employee of any municipal corporation, including the county seat, or county board or any other municipal corporation which joined in the organization of the Commission, shall not disqualify that person from being a Commissioner of a Public Building Commission. No person who is appointed as a Commissioner of a Public Building Commission shall have a financial interest in the creation of or in the continued existence of the Public Building Commission. No Commissioner shall acquire any interest, direct or indirect, in any contract or proposed contract of the Public Building Commission, or in any land, building or buildings, or other property or facilities in which the Public Building Commission has taken an interest. If any Commissioner at any time holds or controls an interest, direct or indirect, in any property which the Public Building Commission is about to acquire, he shall disclose the same in writing to the Commission and such disclosure shall be entered upon the minutes of the Board of Commissioners. 1955, July 5, Laws 1955, p. 905, ¶6; 1957, May 16, Laws 1957, p. 178, ¶1.

3307. Compensation of commissioners—Reimbursement for expenditures

No Commissioner shall receive any compensation, whether in form of salary, per diem allowance or otherwise, for or in connection with his services as such Commissioner. Each Commissioner, however, shall be entitled to reimbursement for any necessary expenditures in connection with the performance of his duties. 1955, July 5, Laws 1955, p. 905, ¶7.

3308. Board of commissioners—Government, control and management of affairs of commission—Powers—Meetings—Notice—Officers of commission

The Commissioners appointed in pursuance of the foregoing provisions of this Act shall constitute the Board of Commissioners of the Public Building Commission. The government, control and management of the affairs of the Public Building Commission shall possess and exercise all of the powers granted under this Act and such other powers, not inconsistent with this Act, as may be necessary to effectuate the purposes of this Act.

The presiding officer of the county seat or county board by adopting the original organization resolution shall call the first meeting of the Board of Commissioners. He shall give notice in writing to each member of the Board of the time and place of the meeting not less than 5 days prior to the meeting and shall preside over the meeting until the members have elected a Chairman. The members, at the initial meeting, shall first draw lots to determine their terms of office which shall be entered of record in the proceedings of the Board.

The Board of Commissioners at the initial meeting shall elect one of their members as chairman. At such meeting or

at a later meeting, the Board shall elect or appoint a secretary and treasurer and such other officers as they may deem necessary for such terms as they may decide upon. The secretary and treasurer need not be commissioners, and if such officers are not commissioners, they shall receive compensation in such amount as shall be determined by the Board. At such meeting, or at a later meeting, the Commissioners shall adopt a corporate seal, by-laws, and rules and regulations suitable to the purposes of this Act, which shall provide a time for the election of officers and of other regular and special meetings of the Commissioners, and shall contain the rules for the transaction of other business of such Public Building Commission and for amending such by-laws, rules and regulations.

Said Board of Commissioners shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of said Board of Commissioners and of said Public Building Commission and for carrying into effect the object for which such Public Building Commission is created. 1955, July 5, Laws 1955, p. 905, ¶8; 1957, May 16, Laws 1957, p. 178, ¶1.

3309. Quorum—Records—Public inspection

A majority of the Board of Commissioners shall constitute a quorum for the transaction of the business thereof. The concurring vote of a majority of all the Commissioners shall be required for the exercise of any of the powers granted by this Act. All records of the Commission shall be open to public inspection at all reasonable hours. 1955, July 5, Laws 1955, p. 905, ¶9.

3310. Records—Provision for safekeeping—Minutes—Receipts and disbursements—Annual audit—Bond

A Public Building Commission shall provide for the proper safekeeping of its records, subject to the provisions

of "The Local Records Act," enacted by the Seventy-second General Assembly, and shall keep a minute book for the recording of the corporate action of the Board of Commissioners. A complete record of the meetings and proceedings of the Board of Commissioners shall be kept in such minute book and such minutes shall be signed by the Secretary of the Public Building Commission. The Commission shall keep a true and accurate account of its receipts and disbursements and an annual audit shall be made of its books, records and accounts. All officers and employees authorized to receive or retain the custody of money or to sign vouchers, checks, warrants, or evidences of indebtedness on behalf of the Commission, shall furnish surety bond for the faithful performance of their duties and the faithful accounting of all monies that may come into their hands, in an amount to be fixed and in a form to be approved by the Board of Commissioners. As amended 1961, Aug. 18, Laws 1961, p. 3487, ¶1.

3311. Treasurer—Custodian of funds and revenues—Depositories—Designation and qualification

The Treasurer of a Public Building Commission shall be the legal custodian of all funds derived from the issuance of bonds provided for under this Act and of all revenues derived from the operation of any project under this Act and of all other revenues from whatever source received. The Treasurer shall keep all funds and monies belonging to the Public Building Commission in such places of deposit as may be designated by resolution of the Board of Commissioners, provided, however, that only a regularly organized State or National Bank may be designated as a depository. When a bank has been designated as a depository it shall continue as such despository until ten (10) days have elapsed after a new depository is designated and

has qualified by furnishing the statements of resources and liabilities as required by this section. When a new depository is designated, the Board of Commissioners shall notify the surety of the Treasurer of that fact, in writing, at least five (5) days before the transfer of funds. The Treasurer shall be discharged from responsibility for all funds or money which he deposits in a designated bank while the funds and money are so deposited, provided the Treasurer shall not be discharged from the responsibility for any funds or money deposited in a bank if the amount of such deposits exceed seventy-five per cent (75%) of the capital stock and surplus of the bank.

No bank shall be qualified to be designated a depository for monies of a Public Building Commission until it has furnished the Public Building Commission with copies of the last two sworn statements of resources and liabilities which the bank is required to furnish to the auditor of public accounts of this State or to the comptroller of currency. Each bank designated as a depository for such monies, while acting as such depository, shall furnish the Board of Commissioners of the Public Building Commission with a copy of all statements of resources and liabilities which it is required to furnish to said auditor of public accounts or to the comptroller of currency. 1955, July 5, Laws 1955, p. 905, ¶11.

3312. Employment of technical, professional, and clerical assistants—Compensation—Loan of employees by municipal corporations—Office space

The Board of Commissioners may employ such technical, professional, and clerical assistants as are necessary and expedient for the proper performance of its duties and for the accomplishment of the objects and purposes of the Commission. The salaries, fees, or other compensation of any

such employee shall be fixed and determined by the Board of Commissioners.

For the purpose of aiding and cooperating with a Public Building Commission, the municipal corporations participating it its organization may assign or loan any of their employees, whether under Civil Service or not, to the Public Building Commission to aid in the performance of any of the work of the Public Building Commission, and may provide necessary office space, equipment or other facilities for the Public Building Commission.

Any such employees so assigned or loaned who are member or beneficiaries of any existing pension or retirement system or who have been appointed to positions in the service of such participating municipal corporations under rules and classifications of any Civil Service Commission shall have the same status with respect thereto after assignment to the Public Building Commission.

To facilitate the Public Building Commission in aid of any project undertaken by it any municipal corporation joining in its organization may make available to the Public Building Commission the services of its engineering staff and facilities. 1955, July 5, Laws 1955, P. 905, ¶12.

3313. Donations of property—Cash grants to commission

This Act being designed to effect a public use and purpose, the corporate authorities of the municipal corporation or corporations creating the Public Building Commission and the corporate authorities of any other municipal corporations which may be desirous of renting space in any building or buildings to be acquired or constructed by such Public Building Commission, may make donations of property, real or personal, or cash grants to the Public Building Commission in such amount or amounts as they may deem proper and appropriate in aiding the Public Building Commission to effectuate the purpose for its creation. 1955, July 5, Laws 1955, p. 905, ¶13.

3314. Status of commission—Actions by or against—Seal —Perpetual succession Powers

A Public Building Commission shall be a municipal corporation and shall constitute a body corporate and politic separate and apart from any other municipal corporation, or any other public or governmental agency. It may sue and be sued, plead and be impleaded, and have a seal and alter the same at pleasure, have perpetual succession, make and execute contracts, leases, deeds and other instruments necessary or convenient to the exercise of its powers, and make and from time to time amend and repeal its by-laws, rules and regulations not inconsistent with this Act. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary, to carry out and effectuate such express powers:

(a) To select, locate and designate one or more areas lying wholly within the territorial limits of the county seat of the county in which the Commission is organized as the site or sites to be acquired for the erection, alteration or improvement of a building or buildings for the purposes hereinafter set forth. The site or sites selected shall be conveniently located within such county seat and of an area in size sufficiently large to accomplish and effectuate the purpose of this Act and sufficient to provide for proper architectural setting and adequate landscaping for such building or buildings.

(1) Where the governing body of the county seat has adopted the original resolution for the creation of the Commission the site or sites selected shall be subject to approval by a majority of the members of the governing body of the county seat.

(2) Where the original resolution for the creation of the Commission has been adopted by the governing body of the county, the site or sites selected by the Commission shall be subject to approval by a majority of the members of the governing body of the county and to approval by three-fourths of the members of the governing body of the county seat; and, if such site or sites so selected shall not be approved by three-fourths of the members of the governing body of the county seat the Commission may by resolution request that the approval of the site or sites so selected be submitted to a referendum at the next general county election, and shall present such resolution to the county clerk. Upon receipt of such resolution the county clerk shall immediately notify the board of election commissioners, if any; the county clerk or board of election commissioners, or both, shall give notice that at the next general county election, every elector may vote upon the proposition stated in the resolution and the clerk or board of election commissioners shall give such notice in the next legal notice of a general election in the county and provision shall be made by the county clerk or board of election commissioners for voting upon the proposition in accordance with the notice; provided however that elections pursuant to resolution shall not be called more frequently than once in 4 years. The ballot upon the proposition shall be substantially the following form:

Shall ..... be acquired for the erection, alteration or improvement of a building or building pursuant to the Public Building Commission Act, approved July 5, 1955, which project it is estimated will cost $....., including the cost of the site acquisition and for the payment of which revenue bonds in the amount of $....., maturing ..... and bearing interest at the rate of .....% per annum, may be issued?	YES NO

If a majority of the electors vote in favor of the proposition, the site or sites so selected shall be approved. Except where approval of the site or sites has been obtained by referendum, the area or areas may be enlarged by the Board of Commissioners, from time to time, as the need therefor arises. The selection, location and designation of more than one area may, but need not, be made at one time, but may be made from time to time.

(b) To acquire the fee simple title to the real property located within such area or areas, including easements and reversionary interests in the streets, alleys and other public places and personal property required for its purposes, by purchase, gift, devise, or by the exercise of the power of eminent domain, and title thereto shall be taken in the corporate name of the Commission. Eminent domain proceedings shall be in all respects in accordance with an Act entitled "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, as heretofore or hereafter amended. All land and appurtenances thereto, acquired or owned by the Commission are to be deemed acquired or owned for a public use or public purpose.

Any municipal corporation which organized or joined in the organization of the Commission and which owns fee

simple title to real property located within such an area, may convey such real property, or any part thereof, to the Commission with a provision in such conveyance for the reverter of such real property to the transferor municipal corporation at such time as all revenue bonds and other obligations of the Commission incident to the real property so conveyed, have been paid in full, and such Commission is hereby authorized to accept such a conveyance.

(c) To demolish, repair, alter or improve any building or buildings within the area or areas and to erect a new building or buildings and other facilities within the area or areas. To furnish and equip the same, and maintain and operate such building or buildings and other facilities so as to effectuate the purposes of this Act.

(d) To pave and improve streets within such area or areas, to construct, repair and install sidewalk, sewers, waterpipes and other similar facilities and site improvements within such area or areas and to provide for adequate landscaping essential to the preparation of such site or sites in accordance with the purposes of this Act.

(e) To make provisions for offstreet parking facilities.

(f) To operate, maintain, manage and to make and enter into contracts for the operation, maintenance and management of such buildings and other facilities and to provide rules and regulations for the operation, maintenance and management thereof.

(g) To employ and discharge without regard to any Civil Services Act, engineering, architectural, construction, legal and financial experts and such other employees as may be necessary in its judgment to carry out the purposes of this Act and to fix compensation for such employees, and enter into contracts for the employment of any person,

firm, or corporation, and for professional services necessary or desirable for the accomplishment of the objects and purposes of the Commission and the proper administration, management, protection and control of its property.

(h) To rent all or any part or parts of such building, buildings or other facilities to any municipal corporation which organized or joined in the organization of the Public Building Commission or to any branch, department or agency thereof, or to any branch, department or agency of the State or Federal government, or to any other municipal corporation, quasi municipal corporation, political subdivision or body politic, or agency thereof, doing business, maintaining an office or rendering a public service in such county seat or county for any period of time, not to exceed 20 years.

(i) To rent such space in such building or buildings as from time to time may not be needed by any governmental agency for such other purposes as the Board of Commissioners may determine will best serve the comfort and convenience of the occupants of such building or buildings, and upon such terms and in such manner as the Board of Commissioners may determine.

(j) To execute written leases evidencing the rental agreements authorized in Clauses (h) and (i) of this section.

(k) To procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employer's liability, against any act of any member, officer or employee of the Public Commission in the performance of the duties of his office or employment or any other insurable risk, as the

Board of Commissioners in its discretion may deem necessary.

(l) To accept donations, contributions, capital grants or gifts from any individuals, associations, municipal and private corporations and the United States of America, or any agency or instrumentality thereof, for or in aid of any of the purposes of this Act and to enter into agreements in connection therewith.

(m) To borrow money from time to time and in evidence thereof to issue and sell revenue bonds in such amount or amounts as the Board of Commissioners may determine to provide funds for the purpose of acquiring, erecting, demolishing, improving, altering, equipping, repairing, maintaining and operating buildings and other facilities and to acquire sites necessary and convenient therefor and to pay all costs and expenses incident thereto, including, but without in any way limiting the generality of the foregoing, architectural, engineering, legal and financing expense, which may include an amount sufficient to meet the interest charges on such revenue bonds during such period or periods as may elapse prior to the time when the project or projects may become revenue producing and for one year in addition thereto; and to refund and refinance, from time to time, revenue bonds so issued and sold, as often as they may be deemed to be advantageous by the Board of Commissioners.

(n) To enter into any agreement or contract with any Lessee, who, pursuant to the terms of this Act, is renting or is about to rent from the Commission all or part of any building or buildings or facilities, whereby under such agreement or contract said Lessee obligates itself to pay all or part of the cost of maintaining and operating the premises so leased. Such agreement may be included as a provision of any Lease entered into pursuant to the terms

of this Act or may be made the subject of a separate agreement or contract between the Commission and such Lessee. As amended 1961, Aug. 4, Laws 1961, p. 2772, ¶1.

3314.1 Interim notes—Issuance—Registration—Payment —Covenants

In addition to the permanent financing authorized by Sections 14 and 15 of this Act, the Board of Commissioners of any public building commission may borrow money and issue interim notes in evidence thereof, in the manner following:

(a) Whenever any area or site has been selected, located, designated and approved, as provided by Section 14 of this Act, and it is deemed advisable and in the interests of the Commission to borrow funds temporarily for the acquisition of the area or site in advance of permanent financing, the Board of Commissioners may from time to time and pursuant to appropriate resolution, issue interim notes to evidence borrowings for the purpose of obtaining funds with which to acquire the area or site selected and approved for the erection, alteration or improvement of a building or buildings to be located thereon for the purposes provided for by this act, including funds for payment of interest on such borrowings and funds for all necessary and incidental expenses in connection with said area or site until the date of the permanent financing. Any resolution authorizing the issuance of said notes shall describe the area or site to be acquired and shall specify the principal amount, rate of interest (not exceeding six per cent per annum) and maturity date which shall be the same for all interim notes but not to exceed five years from date of issue of the first of said notes so issued, and such other terms as may be specified in said resolution; provided, however, that time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

The Board of Commissioners may provide for the registration of the notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the Board may determine by the resolution authorizing their issue. The notes shall be issued from time to time by the Board of Commissioners as funds are borrowed, in the manner the Board of Commissioners may determine. Interest on the notes may be made payable semiannually or at maturity. The notes may be made redeemable, prior to maturity, at the option of the Commission, in the manner and upon the terms fixed by the resolution authorizing their issuance. The notes may be executed in the name of the Commission by the Chairman of the Board of Commissioners or by any other officer or officers of the Commission as the Board by resolution may direct, shall be attested by the Secretary or such other officer or officers of the Commission as the Board may by resolution direct, and be sealed with the Commission's corporate seal. All said notes and the interest thereon may be secured by a pledge of any income and revenue derived by the Commission from the property to be acquired with the proceeds of the notes, after deducting from such income and revenue any reasonable and necessary maintenance and operation expenses, and shall be payable solely from said income and revenue and from the proceeds to be derived from the sale of any revenue bonds for permanent financing authorized to be issued under Sections 14 and 15 of this Act, and from the property acquired with the proceeds of the notes.

Contemporaneously with the issue, as provided by this Act, of revenue bonds all interim notes, even though they may not then have matured, shall be paid, both principal and interest to date of payment, from the funds derived from the sale of revenue bonds for the permanent financ-

ing and such interim notes shall be surrendered and canceled.

(b) The Commission, in order further to secure the payment of the interim notes, is, in addition to the foregoing, authorized and empowered to do the following:

1. Pledge or mortgage all or any part of the property to be acquired with the proceeds of the interim notes, or provide otherwise for the sale, public or private and with or without notice, of all or any part of the property, in the event of default in payment of principal of or interest on the interim notes or on any covenant or agreement of the Commission in connection with the interim notes, and in the event of any such default to permit the acceleration of the maturity of the interim notes. Except with respect to the finds derived from revenue bonds, as hereinabove provided, no pledge, mortgage or provision for the sale of any property shall relate to any property, other than the property to be acquired with the proceeds of any and all said interim notes, and any net income and revenue derived from the property.

2. Covenant against pledging or mortgaging or otherwise disposing of all or any part of or interest in the property to be acquired with proceeds of the interim notes, or any net income derived from the property; and against permitting or suffering any lien on the property or said net income; and against any borrowings or incurring liabilities in addition to the borrowings and liabilities, evidenced by the interim notes, prior to the issuance of revenue bonds; and against the issue of interim notes in excess of a specified principal amount; and against preference of any interim note over any other interim note as to payment of interest or principal; and against making any substitutions for or additions or improvements to said property except with the proceeds derived from borrowings evi-

denced by any and all said interim notes, or with the net income derived from said property.

3. Make any other or additional covenants, terms and conditions not inconsistent with the provisions of subparagraph (a) of this Section, and do any and all acts and things as may be necessary or convenient or desirable in order to secure payment of its interim notes, or, in the discretion of the Commission, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts or things may not be enumerated herein; provided, however, that nothing contained in this subparagraph shall authorize the Commission to secure the payment of the interim notes out of property, other than the property acquired with the proceeds of the interim notes, and any net income and revenue derived from the property and the proceeds of revenue bonds as hereinabove provided.

(c) The interim notes shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(d) No member, officer, agent or employee of the Commission, nor any other person who executes interim notes, shall be liable personally thereon by reason of the issuance thereof. 1955, July 5, Laws 1955, p. 905, ¶14.1, added 1961, Aug. 4, Laws 1961, p. 2770, ¶1.

3314.2 Exercise of powers in municipal corporations not county seat

The powers of a Public Building Commission granted in Section 14 may also be exercised in any municipal corporation not the county seat in the same manner, as near as may be, as provided in this Act. 1955, July 5, Laws 1955 p. 905, ¶14.2, added 1963, p. 2126, ¶1.

3315. Resolution—Contents—Bonds—Denominations—Maturity—Registration—Interest Rate—Execution of bonds—Coupons—Refunding bonds—Sinking fund

Whenever and as often as the Board of Commissioners determines to issue bonds as provided in this Act, it shall adopt a resolution describing the area to be acquired, the nature of the improvements thereon, the disposition to be made of such improvements and a description of any new buildings or other facilities to be constructed thereon. Such description shall not prohibit the Board of Commissioners from making such minor changes as may be necessary or convenient in the discretion of the Board of Commissioners.

The resolution shall set out the estimated cost of the project, including the cost of acquiring the site therefor, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions and all other details in connection with such bonds. The Board shall determine and fix the rate of interest of any revenue bonds issued hereunder, in such resolution or in any supplemental resolution adopted by the Board prior to the issuance thereof. The resolution, trust agreement or other contract entered into with the bondholders may contain such revenue bonds thereafter as may be deemed necessary or advisable for the issuance of the payment of the bonds thereby authorized.

All bonds shall be issued in the name of the Public Building Commission and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of this State.

Bonds issued under this Act, whether original issue or issues or refunding, may be issued as serial or term bonds,

shall be of such denomination or denominations and form, including interest coupons to be attached thereto, shall be payable at such place or places and bear such date as the Board of Commissioners shall fix by the resolution authorizing such bonds and shall mature within a period not to exceed forty (40) years, and may be redeemable prior to maturity with or without premium, at the option of the Board of Commissioners, upon such terms and conditions as the Board of Commissioners shall fix by the resolution authorizing the issuance of such bonds. The Board of Commissioners may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest upon such terms and conditions as the Board of Commissioners may determine. All bonds issued hereunder by any Public Building Commission shall be sold at such price that the interest cost to the Commission of the proceeds of such bonds shall not exceed six percent (6%) per annum, payable semi-annually, computed to maturity and shall be sold in such manner and at such time or times as the Board of Commissioners shall determine.

Bonds issued by a Public Building Commission, and the interest thereon, shall be payable solely from the revenues derived from the operation, management or use of the buildings or other facilities acquired or to be acquired by the Commission, which revenues shall include payment received under any leases or other contracts for the use of the facilities, buildings or space therein. All bonds shall recite in the body thereof that the principal and interest thereon are payable solely from the revenues pledged to pay the same and shall state on their face that it is not an indebtedness of the Commission or a claim against the property of such Commission.

The bonds shall be executed in the name of the Commission by the Chairman of the Board of Commissioners or by

such other officer of the Commission as the Board, by resolution, may direct, and be attested by the Secretary, or by such other officer of the Commission as the Board, by resolution, may direct, and shall be sealed with the Commission's corporate seal. The interest coupons attached to such bonds shall be executed by the facsimile signatures of the persons who shall execute the bonds. The Chairman and the Secretary or other officers of the Commission executing the bonds shall adopt for their own signatures, their respective facsimile signatures appearing on such coupons. In case any officer whose signature shall nevertheless be valid and sufficient for all purposes, the same as if said officer had remained in office until such delivery.

In its discretion, the Public Building Commission may from time to time, as often as it may deem to be advantageous, issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds; refund interest at the coupon rate, upon its outstanding matured bonds that has accrued since the maturity thereof, and refunds its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased in accordance with this Act shall forthwith be cancelled and shall not be used again.

To secure the payment of any or all revenue bonds and for the purpose of setting forth the covenants and undertakings of the Commission in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management or use of the buildings or other facilities acquired or to be acquired by the Commission, the Commission may execute and deliver a trust agreement or agreements except that no lien upon any physical property of the Commission shall be created thereby.

The proceeds from the sale of bonds hereunder shall be paid to the Treasurer of the Public Building Commission, or in the event that a trust agreement is executed and delivered by the Commission, then and in such event, the proceeds from the sale of bonds hereunder shall be paid to the trustee or trustees specified in any such trust agreement. If the proceeds from the sale of the bonds issued hereunder shall exceed the cost of the project, the Public Commission shall place such excess funds in the sinking fund created for making payment of principal or interest of such bonds as the same matures or for the purchase of outstanding bonds at such times and in such manner as may be provided in the resolution authorizing the issuance of such bonds, or in any trust agreement or contract entered into with the bondholders.

The resolution shall provide for the creation of a sinking fund account into which shall be payable from the revenues of such project from month to month as such revenues ar collected, such sums in excess of the cost of maintenance and operation of the project and the costs of administration of the Commission, as will be sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The Board of Commissioners, in such resolution, may provide for such other accounts as it may deem necessary for the sale of the bonds. The monies in said accounts shall be applied in the manner provided by the resolution, the trust agreement or other contract with the bondholders.

No bond issue under this Act shall constitute a debt of the Commission or of any public body within the meaning of any statutory or constitutional limitation as to debt.

From and after issuance of bonds as herein provided it shall be the duty of the Board of Commissioners to es-

tablish and fix rates, rentals, fees and charges for the use of any and all buildings or space therein or other facilities owned and operated by the Commission, sufficient at all times to pay maintenance and operation costs and to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution. 1955, July 5, Laws 1955, p. 905, ¶15.

3316. Trust agreements with or for bondholders—Enforcement

Any trust agreement or agreements entered into with or for the benefit of the bondholders may prescribe by whom or on whose behalf action may be taken by the bondholders, and in the absence of any such provision in the trust agreement or agreements, any holder of a bond or bonds, or of any of the coupons of any bond or bonds, issued under the provisions of this Act, subject only to a contractual restriction binding upon any such bondholder or holders, may:

(a) By mandamus, suit, action or proceeding at law or in equity, compel the Commission, and the member or members, officers, agents or employees thereof, to perform each and every term, provision and covenant contained in any resolution, trust agreement or contract with or for the benefit of such bondholder, and to require the carrying out of any or all such covenants and agreements of the Commission and the fulfillment of all duties imposed upon said Commission by this Act.

(b) By suit, action or proceeding in equity, sue to enjoin any act or things which may be unlawful, or in violation of any of the rights of said bondholder. 1955, July 5, Laws 1955, p. 905, ¶16.

3317. Revenue bonds—Legal investments

The State and all counties, cities, villages, incorporated towns and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, monies or other funds belonging to them or within their control in any revenue bonds issued pursuant to this Act, it being the purpose of this section to authorize the investment in such revenue bonds of all sinking, insurance, retirement, compensation, pension and trust funds, whether owned or controlled by private or public persons or officers. 1955, July 5, Laws 1955, p. 905, ¶17.

3318. Levy and collection of annual tax to pay lease rentals—Filing certified copy of lease or tax ordinance

Whenever, and as often as a municipal corporation having taxing powers enters into a lease with a Public Building Commission, the governing body of such municipal corporation shall provide by ordinance or resolution, as the case may be, for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under such lease as and when it becomes due and payable. A certified copy of the tax levying ordinance or resolution, as the case may be, of such municipal corporation shall be filed in the office of the county clerk in each county in which any portion of the territory of such municipal corporation is situated, which certified copies shall constitute the authority for the county clerk or clerks, in each case, to extend the taxes annually necessary to pay the annual rent payable

under such lease as and when it becomes due and payable. Upon such filing in the office of the county clerk or clerks of the proper county, it shall be the duty of such county clerk or clerks to ascertain the rate per cent which, upon the full, fair cash value of all property subject to taxation within the municipal corporation, as that property is assessed or equalized by the Department of Revenue, will produce a net amount of not less than the amount of the annual rent reserved in such lease. The county clerk or clerks shall thereupon, and thereafter annually during the term of the lease, extend taxes against all of the taxable property contained in that municipal corporation sufficient to pay the annual rental reserved in such lease. Such tax shall be levied and collected in like manner with the other taxes of such municipal corporation and shall be in addition to all other taxes now or hereafter authorized to be levied by that municipal corporation. This tax shall not be included within any statuary limitation of rate or amount for that municipal corporation but shall be excluded therefrom and be in addition thereto and in excess thereof. The fund realized from such tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full. The foregoing shall not be construed to limit the power of the Commission to enter into leases with any municipal corporation whether or not the municipal corporation has the power of taxation. 1955, July 5, Laws 1955, p. 905, ¶18.

3319. Contracts for construction, repair, etc.—Contents—Bond—Insurance

Any contract let for the construction, repair, alteration, or improvement of any building or buildings, the demolition thereof, or removal of debris resulting therefrom, or any other contract let for any other type of construction or re-

pair work, shall contain provisions requiring the contractor or other person, firm or corporation undertaking such work to give bond in such amount and with such surety, conditioned for the faithful performance of the contract as the Board of Commissioners may determine. The Board of Commissioners shall also require such contractor or other persons, firm or corporation to furnish insurance of a character and amount to be determined by the Board of Commissioners, protecting the Commission, its Commissioners, officers, agents, and employees, against any claims for personal injuries (including death) and property damage that may be asserted becauseof the doing of the work. 1955, July 5, Laws 1955, p. 905, ¶19.

3320. Contracts let to lowest responsible bidder—Competitive bidding—Advertisement for bids

All contracts to be let for the construction, alteration, improvement, repair, enlargement, demolition or removal of any buildings or other facilities, or for materials or supplies to be furnished, where the amount thereof is in excess of $2,500.00, shall be let to the lowest responsible bidder, or bidders, an open competitive bidding after public advertisement published at least once in each week for three consecutive weeks prior to the opening of bids, in a daily newspaper of general circulation in the county where the commission is located. Nothing contained in this Section shall be construed to prohibit the Board of Commissioners from placing additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract in sufficient detail to enable the bidders thereon to know what their obligation will be, either in the advertisement itself, or by reference to detailed plans and specifications on file in the office of the Public Building Commission at the time of the publication of the first announcement. Such advertisement shall also

state the date, time, and place assigned for the opening of bids and no bids shall be received at any time subsequent to the time indicated in said advertisement. The Board of Commissioners may reject any and all bids received and readvertise for bids. All bids shall be open to public inspection in the office of the Public Building Commission for a period of at least forty-eight (48) hours before award is made. The successful bidder for such work shall enter into contracts furnished and prescribed by the Board of Commissioners and in addition to any other bond required under this Act, the successful bidder shall execute and give bond, payable to and to be approved by the Commission, with a corporate surety authorized to do business under the laws of the State of Illinois, in an amount to be determined by the Board of Commissioners, conditioned upon the payment of all labor furnished and materials supplied in the prosecution of the contracted work. If the bidder whose bid has been accepted shall neglect or refuse to accept the contract within five (5) days after written notice that the same has been awarded to him, or if he accepts but does not execute the contract and give the proper security, the Commission may accept the next lowest bidder, or readvertise and relet in manner above provided. In case any work shall be abandoned by an contractor the Commission may, if the best interests of the Commission be thereby served, adopt on behalf of the Commission all sub-contracts made by such contractor for such work and all such sub-contractors shall be bound by such adoption if made; and the Commission shall, in the manner provided herein, readvertise and relet the work specified in the original contract exclusive of so much thereof as shall be accepted. Every contract when made and entered into, as herein provided for, shall be executed in duplicate, one copy of which shall be held by the Commission, and spread on its records, and one copy of which shall be given to the contractor. 1955, July 5, Laws 1955, p. 905, ¶ 20.

3321. Execution of leases, contracts, deeds, etc.

All leases, contracts, deeds of conveyance, or instruments in writing executed by the Commission, shall be executed in the name of the Commission by the Chairman and Secretary of the Commission, or by such other officers as the Board of Commissioners, by resolution, may direct, and the seal of the Authority shall be affixed thereto. 1955, July 5, Laws 1955, p. 905, ¶ 21.

3322. Exemption from taxation

All property of the Public Building Commission shall be exempt from taxation by the State or any taxing unit therein. 1955, July 5, Laws 1955, p. 905, ¶ 22.

3323. Dissolution of Commission

Any Public Building Commission which has not issued any bonds and has no indebtedness may be dissolved upon the filing, by the presiding officer of the county seat or county board which organized such Commission, in the office of the Recorder of Deeds a copy of a resolution adopted by the governing body of such county seat or county board approving such dissolution. 1955, Laws 1955, p. 905, ¶ 22.1, added 1957, May 16, Laws 1957, p. 178, ¶ 1.

3324. Partial invalidity

The provisions of this Act and the applications thereof to any person or circumstance are declared to be severable.

If any section, clause, sentence, paragraph, part or provision of this Act shall be held to be invalid by any Court, it shall be conclusively presumed that the remaining portions of this Act would have been passed by the Legislature without such invalid section, clause, sentence, paragraph, part or provision.

If the application of any section, clause, sentence, paragraph, part or provision of this Act to any person or circumstance is held invalid, such invalidity shall not affect the application thereof to other persons or circumstances. 1955, July 5, Laws 1955, p. 905, ¶ 23.

3325. Liberal construction of Act

This Act being necessary for or desirable for and intended to secure the public convenience and welfare, the provisions of this Act shall be liberally construed to give effect to the provisions hereof. 1955, July 5, Laws 1955, p. 905, ¶ 24.

FORMER ILLINOIS CONSTITUTION

Article Six, Section Eighteen. County Courts

There shall be elected in and for each county, one county judge and one clerk of the county court, whose terms of office shall be four years. But the general assembly may create districts of two or more contiguous counties, in each of which shall be elected one judge, who shall take the place of, and exercise the powers and jurisdiction of county judges in such districts. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians and conservators, and settlements of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law. (Constitution of 1870.)

PRESENT ILLINOIS CONSTITUTION

Article Six, Section Nine. Jurisdiction

The Circuit Court shall have unlimited original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law. Adopted general election Nov. 6, 1962.

REVENUE ACT

(Illinois Revised Statutes 1963, Chapter 120, Paragraphs 675 and 716)

675. Payment of taxes—Payments under protest

Current taxes on real property shall be payable in 2 equal installments. The collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

If any person desires to object pursuant to the provisions of Section 235 of this Act, to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of said tax installments due, and such payment shall be accompanied by a writing, substantially in the following form:

Payment under protest.

Vol. No. ..... Item No. ..... (as the same appear on the General Tax Bill). Original amount of tax $..... Amount of payment $..... This payment shall be applied to the taxes of all taxing bodies ratably, subject to refund of .....% of the tax, which is objected to on the ground (here set forth ground of objection) and is, accordingly, made under protest.

Name of taxpayer .....

Address .....

The person protesting shall present to the collector 2 copies of the written protest signed by himself. The collector shall write or stamp the date of receiving the same upon the copies, and sign the same, one of which copies he shall retain and the other he shall deliver to the person making the payment under protest.

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes.

When any such objection is filed in a county of fewer than 500,000 inhabitants, there shall also be filed a duplicate copy for the use of the State's Attorney of such county. Any such objection or amendment thereto filed in a county of fewer than 500,000 inhabitants shall contain on the first page thereof a listing of the tax levying units against which the objection is directed. Within 10 days thereafter the clerk of the county court shall deliver such copy to the State's Attorney, taking his receipt therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or ap-

pointed custodian of funds for each tax levying unit, whose tax monies may be affected by such objection, that such objection has been filed. Any amendment filed to such objection, except any amendment permitted to be made in open court during the course of a hearing on such objection, shall likewise be filed in duplicate, with the duplicate copy delivered to the State's Attorney by the clerk as hereinabove provided in the case of original objections, and the State's Attorney shall within 10 days of receiving his copy of such amendment notify the duly elected or appointed custodian of funds for each tax levying unit whose tax monies may be affected by such amendment that such amendment has been filed. The State's Attorney shall also notify such custodian in writing of the date, time and place of any hearing before the court to be held upon such objection or amended objection not later than 4 days prior to the hearing thereon. The notices provided herein shall be by letter addressed to such custodian and may be mailed by regular mail, postage prepaid, postmarked within the 30 day period or the 10 day period, as the case may be, but not less than 4 days before a hearing.

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of the court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same or a subsequent year.

Where any tax is paid in full and protested as herein provided before the delinquent taxes are transcribed into the tax judgment, sale, redemption and forfeiture record, and the taxpayer appears and files objection, the collector, within such time as may be fixed by the court, shall file a transcript from the tax warrant book showing the tax, and such transcript shall be an amendment to the tax judgment, sale, redemption and forfeiture record, and the case shall proceed as if the tax had been originally transcribed therein.

In the payment of real or personal property taxes or any installment of real property taxes, the collector shall first apply such payments to interest (including interest added upon forfeiture to real property taxes) and costs, and after the payment of interest and costs such payments shall be applied upon the total tax of real or personal property upon which the payments are made.

No protest shall prevent or be a cause of delay in the distribution of tax collections among the taxing bodies of any taxes collected which were not paid under protest. It shall be the duty of the collector to deduct from the taxes of any taxing body for any year the amount of any tax for any year held illegal by the final order of a court, and use the amount deducted to equalize the distribution. As amended 1957, May 23, Laws 1957, p. 249, ¶ 1; 1961, Aug. 1, Laws 1961, p. 2554, ¶ 1; 1961, Aug. 1, Laws 1961, p. 2567, ¶ 1; 1963, Aug. 23, Laws 1963, p. 3368, ¶ 1.

716. Proceedings by court—Form of order—Cure of error or informality.

The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court

shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest pursuant to the provisions of section 194 of this Act; and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

> Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown why judgment shall not be entered against said lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount

of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission, defective act of any other officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all

cities, villages and incorporated towns in counties containing a population exceeding 500,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required in section 209, may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on account of delinquent special taxes and special assessments and the other on account of delinquent general taxes. As amended 1957, May 23, Laws 1957, p. 249, ¶ 1.

CONVEYANCES

(Illinois Revised Statutes, 1963,
Chapter 30, Paragraph 157)

157. Method of making transfer

If the territory of any municipality shall be wholly within, co-extensive with, or partly within and partly without the corporate limits of any other municipality, and the first mentioned municipality (herein called "transferee municipality"), shall by ordinance declare that it is necessary or convenient for it to use, occupy or improve any real estate held by the last mentioned municipality (herein called the "transferor municipality") in the making of any public improvement or for any public purpose, the corporte authorities of the transferor municipality shall have the power to transfer all of the right, title and interest held by it immediately prior to such transfer, in and to such real estate, whether located within or without either or both of said municipalities, to the transferee municipality upon such terms as may be agreed upon by the corporate authorities of both municipalities, in the manner and upon the conditions following:

(a) If such real estate shall be held by the transferor municipality without restriction, the said municipality shall have power to grant or convey such real estate or any portion thereof to the transferee municipality upon such terms as may be agreed upon by the corporate authorities of both municipalities, by an instrument of conveyance signed by the mayor, president or other chief executive of the transferor municipality, attested by its clerk or secretary and sealed with its corporate seal, all duly authorized by a resolution passed by the vote of two-thirds (⅔) of all of the members of the legislative body of the transferor municipality, and duly recorded in the office of the recorder of deeds in the county in which said real estate is located. Provided, however, that any municipality may, in the manner above provided, convey real estate to a Public Building Commission organized and existing pursuant to "An Act to authorize the creation of Public Building Commissions and to define their rights, powers and duties", approved July 5, 1955, as heretofore or hereafter amended, when duly authorized by a majority vote of all of the members of the legislative body of such municipality whenever provision is made in the conveyance for a reverter of the real estate to such transferor municipality. The transferee municipality shall thereafter have the right to use, occupy or improve the real estate so transferred for any municipal or public purpose and shall hold said real estate by the same right, title and interest by which the transferor municipality held said real estate immediately prior to said transfer.

(b) If any such real estate shall be held by the transferor municipality subject to or limited by any restriction, and the transferee municipality shall desire the use, occupation or improvement thereof free from said re-

striction, the transferor municipality (or the transferee municipality, in the name of and for and on behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to secure from its grantor, or grantors, their heirs, successors, assigns, or others, a release of any or all of such restrictions upon such terms as may be agreed upon between either of said municipalities and the person or persons entitled to the benefit of said restrictions. Upon the recording of any such release the transferor municipality shall then have the powers granted in paragraph (a) of this section.

(c) If either the transferor municipality or the transferee municipality shall be unable to secure a release of any restriction as above provided, the transferor municipality (or the transferee municipality in the name of and for and in behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to file in any Circuit Court, or in the Superior Court of Cook County, a petition for the purpose of removing or releasing said restriction and determining the compensation, if any, to be paid in consequence thereof to the owner or owners of said real estate, for any right, title, or interest which they or any of them may or might have in and to any such real estate arising out of said restriction. If any compensation shall be awarded, the same shall be measured by the actual damage, if any, to the owner or owners of said real estate, resulting from the removal or release of said restriction, and shall be determined as of the date of the filing of said petition. Upon the payment of such compensation as may be awarded, if any, the transferor municipality shall have the powers

granted in paragraph (a) of this section, and said transferor municipality shall grant and convey the said real estate to the transferee municipality upon the terms and conditions theretofore agreed upon by the said municipalities and in the manner provided for in paragraph (a) of this section.

(d) If the transferor municipality shall hold an easement in any real estate for a particular purpose different from the purpose for which the transferee municipality shall desire to use, occupy or improve said real estate, the transferor municipality (or the transferee municipality in the name of and for and in behalf of the transferor municipality, but without subjecting the transferor municipality to any expense without the consent of its corporate authorities), shall have the power to file in any Circuit Court or in the Superior Court of Cook County, a petition for the purpose of terminating said easement and securing the right to use, occupy and improve any such real estate for the purpose or purposes set forth in said petition, and for determining the compensation, if any, to be paid in consequence thereof to the owner, or owners of said real estate. If any compensation shall be awarded, the same shall be measured by the actual damage, if any, to the owner or owners of said real estate, resulting from the termination of said easement and the granting of the right sought in said petition, and shall be determined as of the date of the filing of said petition. Upon the payment of such compensation as may be awarded, if any, the easement held by the transferor municipality shall in the final order entered in such proceeding be declared terminated and the right of the transferee municipality in said real estate shall be declared. If the transferee municipality shall desire to use, occupy or improve said real estate for the

same purpose authorized by the easement held by the transferor municipality, the transferor municipality shall have the power to transfer said easement to the transferee municipality by instrument of conveyance as provided for in paragraph (a).

(e) If such real estate shall have been acquired or improved by the transferor municipality under the Local Improvements Act, or under the said Act in conjunction with any other Act, and the times fixed for the payment of all installments of the special assessments therefor have not elapsed at the time the transferor and transferee municipalities shall have reached an agreement for the transfer of said real estate, the transferee municipality shall deposit with the transferor municipality to be placed in the special assessment funds authorized to be collected to pay the cost of acquiring or improving said real estate, and amount sufficient to pay (1) the installments of said special assessments not due and payable at the time of the agreement for said transfer, and (2) the amounts paid in advance by any property owner on account of said special assessments, which, had such amounts not been paid in advance, would have been due and payable after the date of such agreement, and the transferor municipality shall upon the receipt of such amount cause orders to be entered in the courts in which said special assessments were confirmed, cancelling the installments becoming due and payable after the said time at which the transferor and transferee municipalities shall have reached an agreement for the transfer of said real estate, and releasing the respective lots, tracts, and parcels of real estate assessed in any such proceedings from the installments of said assessments in this paragraph authorized to be cancelled. The transferor municipality shall

after the entry of such orders of cancellation refund to any property owner who has paid the same in advance, any amounts which otherwise would have been due and payable after the said time at which the transferor and transferee municipalities shall have reached an agreement for the transfer of said real estate. Upon the entry of such orders of cancellation the transferor municipality shall then have the powers granted in paragraph (a) of this section.

(f) The procedure, for the removal of any restriction upon the real estate of the transferor municipality, for the termination of any easement of the transferor municipality in said real estate and the declaration of another or different right in the transferee municipality in said real estate, and for the ascertainment of just compensation therefor, shall be as near as may be like that provided in the Eminent Domain Act.

(g) If any property shall be damaged by the release or removal of any restrictions upon, or the termination of any easement in, or the granting of a new right in any real estate held by the transferor municipality, the same shall be ascertained and paid as provided by law. As amended 1961, Aug 4, Laws 1961, p. 2765, ¶ 1.

APPENDIX B.

IN THE SUPREME COURT OF ILLINOIS

Docket No. 38073 — Agenda 74 — September, 1963.

Robert Bowman, Appellant, v. The County of Lake *et al.*, Appellees.

Mr. JUSTICE DAILY delivered the opinion of the court:

This appeal, involving the revenue, is prosecuted by the plaintiff, Ralph Bowman, from orders of the circuit court of Lake County dismissing his complaint and amended complaint brought against the county of Lake, its clerk, its board of supervisors and the Lake County Public Building Commission, and from an order denying his motion to file a further amended complaint.

Pertinent factual background, gathered from the pleadings, briefs and exhibits, shows that by an election held on November 6, 1956, a majority of the voters of the county voted to eliminate the office of township collector. It was anticipated that the elimination would increase the earnings of the office of the county collector by approximately $500,000 per annum and in anticipation of a favorable referendum, (and apparently as the result of public inquiry,) the county board of supervisors, on October 16, 1956, passed a resolution stating in substance that the money would be devoted to such needed "capital expenditures" and "expanded county services" as might be approved by the board, and that when the additional funds became available "no levy shall be approved by this Board, which when added to the balance on hand at the end of the fiscal year, plus anticipated earnings from

other sources during that year, shall produce an amount in excess of the budgeted needs of Lake County."

The next event of consequence occurred on February 9, 1960, when, under authority of the Public Building Commission Act, (Ill. Rev. Stat. 1959, chap. 34, pars. 3301-3325,) the Lake County Public Building Commission was formed by the board of supervisors for the purpose of constructing a new county courthouse. Shortly thereafter, as authorized by section 13 of the act, (Ill. Rev. Stat. 1959, chap. 34, par. 3313,) the county entered into a contract with the commission to transfer the present courthouse land to the commission for use as a building site. On December 14, 1960, as the result of a representative suit brought by the State's Attorney in the name of and on behalf of the People, a decree was entered in the circuit court of Lake County which found that the commission was legally and properly constituted, that the county had the authority to transfer its land to the commission, that the contract between the county and commission was legal and binding, and that the act relating to transfers of real estate by municipal corporations (Ill. Rev. Stat. 1959, chap. 30, pars. 156-158a,) did not apply to the transfer. No appeal was taken from this decree.

On February 6, 1961, the board of supervisors conveyed the land to the commission. Thereafter, in their 1960-1961 appropriation ordinance, again proceeding under authority of section 13 of the Public Building Commission Act, the board made a cash grant of $200,000 to the commission, and in the 1961-1962 appropriation ordinance another cash grant of $450,000 was approved. These sums were in fact transferred to the commission in each of the fiscal years. The 1962-1963 appropriation ordinance approved a further cash grant of $500,000 and, as the matter comes

to us, there are conflicting manifestations as to whether this sum has been transferred. In any event, it was on January 7, 1963, that plaintiff filed the taxpayer's suit which has provoked this appeal.

Plaintiff's original complaint was one for declaratory judgment but it was dismissed January 24, 1963, on motion of defendants and he was granted leave to file an amended complaint. Shortly thereafter, plaintiff filed an amended complaint in equity which, on May 8, 1963, was also dismissed on motion of the defendants. And while plaintiff now seeks review of both orders of dismissal, our consideration of the first order may be at once eliminated from the appeal. Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn. (*Wright* v. *Risser,* 290 Ill. App. 576; *Cantow* v. *Foute,* 335 Ill. App. 574; see also: *Wende* v. *Chicago City Railway Co.* 271 Ill. 437; *Precision Extrusions, Inc.* v. *Stewart,* 36 Ill. App. 2d 30.) Here, an examination of the two pleadings leaves no doubt that the original complaint was abandoned and withdrawn. Indeed, plaintiff completely changed his form of action in the amended complaint.

The first count of the amended complaint, which we find to be replete with conclusions, first alleged the election eliminating the office of township collector and the resolution of the board, then alleged that the board had, since the elimination of such office, accumulated the additional funds realized in a surplus account without designating the purpose thereof, and that in each year since 1957 the board had levied taxes which "failed to utilize" the accumulation in the surplus fund. Other allegations set forth the creation of the Lake County Public Building

Commission; that the board had transferred public funds and public land to the commission; and that there is at the present time the sum of $500,000 accumulated in the surplus account, which sum the 1962-1963 county budget has earmarked for transfer to the commission. Continuing, the count alleged in substance that the accumulation of surplus funds was unlawful, an abuse of discretion, fraudulent, *ultra vires,* and in contravention of the 1956 resolution of the board; that the accumulation resulted in "appropriations" in excess of corporate needs; and that the transfer of funds to the commission was beyond the scope of the corporate authority.

The concluding paragraph of count I, which we set forth in full for purposes of subsequent discussion, alleged the following:

"That under the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Sec. 3318), the Lake County Board of Supervisors is required to levy a direct annual tax on the full, fair cash value of all real and personal property within Lake County, which is not exempt from taxation, which will be sufficient to pay the annual rent on the lease which the Lake County Board of Supervisors is about to enter into for the rent of a building to be erected on property formerly owned by the County of Lake; that since the amount of the annual rental fee is to be determined by the Public Building Commission, which in turn is determinative of the tax to be levied and collected, that the subject Section of the Public Building Commission Act is unconstitutional in that it grants the power to determine the amount of tax to an executive branch of the government; that under the circumstances hereintofore referred to, i.e., the transfer of public funds and lands to the Lake County Building Commission, the action required to be taken by the Lake County Board

of Supervisors in levying the tax as aforesaid will result in two taxes for the same purpose in violation of the due process clause of the State and Federal Constitution; that the said tax will exceed the maximum fixed by statute without the required favorable vote at a referendum; that said tax is for a general corporate purpose and must be included in the corporate purpose rate statutory limitation; that said tax will result in a rate in excess of the maximum rate prescribed by statute and the Illinois Constitution; and that the statute authorizing the levy of said tax is evasive of and in contravention of the Federal and State Constitutions."

Count II of the amended complaint realleged certain parts of count I, then alleged that the county had transferred funds totalling $650,000 and public lands valued at $1,000,000 to the commission, and charged that such transfers were unauthorized, illegal and void. A concluding paragraph repeated verbatim the concluding paragraph of count I heretofore quoted. The remaining count, count III, likewise alleged the transfer of cash and land to the commission and alleged, in substance, that the acceptance of land and cash from the county was beyond the scope of the statutory powers of the commission, and that their acceptance by the commission "is sanctioning a statute impairing the obligation of contract as evidenced by * * *" the county board's resolution of October 10, 1956.

At its conclusion the amended complaint alleged that plaintiff had no remedy at law as to each of the counts and prayed for injunctive relief restraining the county from accumulating funds and transferring funds to the commission; restraining the commission from accepting funds from the county; and directing the commission to restore and return to the county the funds and land it had already received.

Defendants filed a motion to strike the amended complaint and to dismiss the action for want of equity, alleging in substance that conclusions were pleaded in certain respects, that certain of the allegations were false, frivolous and incorrect statements of law; that plaintiff was guilty of *laches;* and that the prior decree approving the transfer of land to the commission was *res judicata* to that issue. Following hearing and argument, the trial court, after taking judicial notice of the Public Building Commission Act and causing the prior decree, the October, 1956, resolution, and the pertinent appropriation ordinances to be made a part of the record, sustained the motion to strike and entered a final order dismissing the action. And while not stated in the formal order, the verbal ruling of the court which preceded the order admits of no doubt that the action was dismissed for want of equity.

Omitting for the moment any consideration of the allegations going to constitutional questions, and indulging in a most liberal construction of the amended complaint, it is one of plaintiff's theories under counts I and II that taxes levied by the county for the years 1957 to 1962 were illegal and void to the extent that they exceeded the county's appropriated needs. This theory, in turn, is founded upon the basic principle that taxes are levied to defray the necessary expenses of government rather than for a purpose of enriching the public treasury, and upon the repeated holdings of this court that taxing bodies may not levy taxes faster than they are needed and that an unnecessary accumulation of money in the public treasury is unjust, unpolitic and against the policy of the law. (*People ex rel. Kramer* v. *Chicago, Burlington and Quincy Railroad Co.* 8 Ill. 2d 382; *People ex rel. Bergan* v. *New York Central Railroad Co.* 390 Ill. 30.) Applied here, it is plaintiff's position that in determining the county's

needs and tax levies for each of the years in question the county authorities failed to take into consideration the extra fees realized by the county treasurer, and that the taxes for these years were excessive to the extent of such sums. In short, plaintiff does not attack the entire tax levied for county corporate purposes in those years, but only so much of the rates as permitted the accumulation subsequently granted to the commission, and we are told in his brief that the purpose of seeking equitable relief is to make the money granted to the commission available for "rebates to the taxpayer."

Even if it be assumed that the allegation of a surplus is true and that the plaintiff's theory is properly pleaded, it is clear that this phase of his suit is a belated attempt to convert a court of equity into a forum for the trial of tax objections contrary to section 18 of article VI of our constitution, which provides that county courts shall have original jurisdiction in proceedings concerning collection of taxes, and to the provisions of sections 194 and 235 of the Revenue Act, (Ill. Rev. Stat. 1961, chap. 120, pars. 675 and 716,) wherein the legislature has provided a remedy for the recovery of taxes paid on real estate. Except when a tax is laid upon exempt property, or is not authorized by law, or is levied on a fraudulently excessive valuation, it is settled that equity will not interfere to enjoin the collection of a tax, or to prevent the proper expenditure of taxes already collected, unless special grounds for equitable jurisdiction exist, such as "fraud," "irreparable injury" and cloud upon title, or unless the plaintiff does not have an adequate remedy at law. (*Lakefront Realty Corp.* v. *Lorenz,* 19 Ill. 2d 415; *Lackey* v. *Pulaski Drainage Dist.* 4 Ill. 2d 72; *Budberg* v. *County of Sangamon,* 4 Ill. 2d 518.) If, on the other hand, the taxing power is present, but has been exercised in an

erroneous or irregular manner, it gives rise merely to an erroneous or irregular tax, as distinguished from a tax wholly unauthorized by law, which will not be enjoined in equity. *Ames* v. *Schlaeger*, 386 Ill. 160.

No allegation is made in the amended complaint that the county lacked the authority to levy the taxes claimed to be excessive, or that the taxes were illegal *per se*, but the substance and effect of its many and arduous allegations is only that the tax officials improperly exercised their authority in such a manner as to cause an unnecessary accumulation of surplus funds. As we pointed out in *Lakefront Realty Corp.* v. *Lorenz*, 19 Ill. 2d 415, under persuasively similar facts, such an objection raises only the issue of an irregular or erroneous tax, for which the Revenue Act provides an adequate remedy, and affords no basis for equitable relief.

Nor were the constitutional issues sought to be pleaded in counts I and II sufficient to entitle plaintiff to relief. Indeed, we believe the motion to dismiss aptly describes them as frivolous. As may be seen in complete detail from our previous quotation from the amended complaint, plaintiff's constitutional attack was directed to section 18 of the Public Building Commission Act. (Ill. Rev. Stat. 1961, chap. 34, par. 3318.) which requires and authorizes municipal corporations entering into leases with the commission to levy an annual tax sufficient to pay the annual rental due under the lease. And, in substance, the grounds of attack are: (1) that the section is unconstitutional in that "it grants the power to tax to an executive branch of the government;" (2) that the levying of the tax "will result in two taxes for the same purpose in violation of the due process clause of the State and Federal Constitution;" (3) that the tax will result in a county rate which will exceed the maximum rate authorized by stat-

nte and constitution; and (4) that the statute authorizing the levy of the tax "is evasive in contravention of the State and Federal Constitutions."

The allegation that the power to tax is granted to an "executive branch" of the government cannot withstand the inspection of law or logic. Apart from the fact that the commission is not a part of the executive branch of the county government, but a separate municipal corporation, (see: *People ex rel. Adamowski* v. *Public Building Commission of Chicago*, 11 Ill. 2d 125), to say that the commission is given the power to tax because it may determine the amount of rental which will be paid from tax monies is absurd. Carried to its logical conclusions, we would have to hold that any merchant or contractor who furnishes goods or services to a county is in effect determining the rate of tax and exercising taxing power by fixing the price to be paid for such goods or services. Furthermore, the commission has little, if any, discretion in determining how much the rental will be. Under the provisions of section 15 of the act, (Ill. Rev. Stat. 1961, chap. 34, par. 3315.) the rentals and charges to be established by the commission are limited to the amounts sufficient to pay maintenance and costs of operation, and to pay accruing interest and bonds at maturity. We believe it clear from this language of the legislature that the commission does not, and will not, either directly or indirectly, possess indiscriminate control or influence over the taxes to be levied by the municipal corporations leasing from it. *Cf. Berger* v. *Howlett*, 25 Ill. 2d 128.

Equally without merit are the allegations that the levying of the tax will result in "two taxes for the same purposes," under the circumstance that the county has made cash grants to the commission. While plaintiff's brief gives us little assistance, and defendants' brief openly professes their lack of comprehension, it is apparently plaintiff's

theory that the cash grants and rentals will be used for duplicate purposes putting the taxpayer in the position of being taxed twice for a single purpose. Stated differently, plaintiff's theory seems to be that the county will make cash grants for the complete payment of the new structure, and in addition levy a tax to pay rental for its use. Such a theory is ludicrous on its face and totally ignores the workings and purposes of the Public Building Commission Act under which the new structure will become the property of the county after twenty years. Far from being for a duplicate purpose, the necessary and ultimate effect of the cash grants and the conveyance of land by the county will be to reduce the rental obligation of the county and the tax burden for such rental. Furthermore, it is noteworthy that no lease has as yet been entered into between the county and the commission, and that no tax has as yet been levied for rentals. Necessarily, therefore, two taxes have not been levied for the same purpose, and as to future taxes the allegation of the complaint is a mere conclusion of the pleader.

Reaching deep to find some validity for his allegation of "two taxes for the same purpose," plaintiff points to the fact that the county presently appropriates and levies for the maintenance and operation of the county building and argues that taxes levied to pay rental to the commission will be for the same purpose. Once again, however, this argument presumes that the county will continue to levy for maintenance and operation after those obligations pass to the commission. Should this occur, the taxpayer is not without a remedy under the Revenue Act. Finally, plaintiff points to the fact that the commission may lease space to State and Federal agencies and to other municipal corporations beside the county and rationalizes that because all of such prospective tenants are tax supported the result will be "double taxation." Not only does this argu-

ment misapprehend the recognized meaning of "double taxation," (see: *People ex rel. Toman* v. *Advance Heating Co.*, 376 Ill. 158, 163,) but it is premised on a false foundation. Being taxed for rental of the space utilized by the county and indirectly for space used by some other governmental unit is not being taxed twice for the same purpose. Moreover, the practical effect of leasing part of the space to other governmental units will be to reduce the rental obligation of the county and the burden placed upon the taxpayer for such item.

Considering next the allegations that the levying of tax for rentals will cause the county corporate rate to exceed the maximum authorized by statute and constitution, it is patently obvious that these are mere conclusions of the pleader and which, even if true, would in no manner warrant the equitable relief prayed. As previously noted, no tax has as yet been levied for the payment of rent, and should future levies for such purpose cause the county rate to exceed the limits fixed by law, a remedy is available to the taxpayer under the Revenue Act. It is to be presumed that the county authorities will act in a proper manner, (*Kankakee County Housing Authority* v. *Spurlock*, 3 Ill. 2d 277,) and, what is more, the vague possibility that the rate necessary to pay the rental authorized by the Public Building Commission Act might in the future cause the total county rate to be excessive is no measure of the constitutionality of the act.

The last of the constitutional allegations, *viz.*, that the statute authorizing the tax "is evasive in contravention of the Federal and State Constitutions," is insufficient to raise a constitutional question and, we would add, affords no basis for a wide ranging attack made in plaintiff's brief against the Public Building Commission Act in general, and the Lake County Public Building Commission in par-

ticular. Where the constitutional validity of a statute is assailed, the objection must be specific and complete. (*Lutkus* v. *Department of Finance,* 385 Ill. 221; *Pierce* v. *Carpentier,* 20 Ill. 2d 526.) At best this allegation of the complaint amounts to no more than a generalized charge of unconstitutionality. *Cf. Jewel Tea Co.* v. *Rowe,* 414 Ill. 495.

It may be conceded that equity will intervene on timely application, once a tax has been collected, to prevent a misappropriation of the fund, (*Gates* v. *Sweitzer,* 347 Ill. 353, 363; *People ex rel. Smith* v. *Hassler,* 262 Ill. 133, 137,) but it is likewise true that equity, in all cases where a mandatory injunction is sought, will strictly requre that the application for relief be promptly made and holds that a failure to assert such right without a sufficient excuse therefor, until after the expenditure of large sums of money, operates as a bar to relief. (*Carstens* v. *City of Wood River,* 344 Ill. 319, *Haas* v. *Commissioners of Lincoln Park,* 339 Ill. 491.) Measured by the latter rule, we think it clear that the effort of count II to recover the cash grants previously appropriated for and delivered to the commission comes too late. And, without going into considerations of *res judicata,* estoppel by verdict or collateral attack raised by the prior decree, we believe the same conclusion is to be reached insofar as the count attempts to compel a reconveyance of the land. All of these events were a matter of public record and known to plaintiff, and no sufficient excuse is shown for the delay which ranges one, two and three years respectively. In addition, there is yet another reason why relief is not forthcoming under this count. Its bare allegations that the county had no authority to transfer funds or land to the commission, and that such transfers were illegal, are met by the language of section 13 of the Public Building Commission Act, (Ill. Rev. Stats. 1959, 1961, chap. 34, par.

3313,) wherein the legislature expressly authorizes cash grants and the donation of real property to a commission. For the same reason, the allegations of count III that the commission had no authority to accept the grants and the land affords no basis for relief.

In count I of the amended complaint it is alleged that the accumulation of surplus funds was "contrary to" the board's resolution of October 10, 1956, while it is alleged in count III that the acceptance of public funds and land by the commission "is sanctioning a statute impairing the obligation of contract" as evidenced by the board's resolution. These theories, however, have not been pursued in this court by argument and citation of authority and we deem them to have been waived. *City of Lawrenceville* v. *Maxwell*, 6 Ill. 2d 42; *People ex rel. Carter* v. *Touchette*, 5 Ill. 2d 303.

Plaintiff's further contention that the trial court committed an abuse of discretion in denying his request to amend the amended complaint is not well taken. The test to be applied in determining whether discretion with respect to allowance of amendment to pleadings was properly exercised is whether it furthers the ends of justice and, in such regard, the court may properly consider the ultimate efficacy of a claim in passing on a motion for leave to amend. (*Deasey* v. *City of Chicago*, 412 Ill. 151.) Here, at the expense of delaying an urgent public project, plaintiff was afforded two opportunities to assert his claims, and we see no manifest abuse of discretion in denying him a third attempt, particularly since nothing was presented to show the materiality of the proposed amendment. (*Cf. Old Salem Chautauqua Assn.* v. *Illinois District Council of the Assembly of God*, 13 Ill. 2d 258.) As we stated in the *Deasey* case (p. 157): "Justice is not served by fruitless expenditure of time and effort by our courts, their officers and litigants."

The record shows that shortly after the original complaint was filed, Judge Moran, before whom the matter was first taken, disqualified himself and the other judges of the Nineteenth Judicial Circuit from hearing the case and assigned it to Judge Abrahamson of an adjoining circuit. No objection was made by plaintiff to such assignment. Defendants filed a motion to dismiss and, after a hearing, Judge Abrahamson dismissed the complaint and granted leave to file an amended complaint. After plaintiff had filed his amended complaint, and after defendants had filed a further motion to dismiss, plaintiff requested and was granted a change of venue from Judge Abrahamson, whose order assigned the cause to Judge O'Sullivan. Plaintiff now asserts that Judge Moran lacked authority to assign the matter to Judge Abrahamson, and that the latter was without authority to assign it to Judge O'Sullivan. While we think it is entirely questionable as to whether plaintiff has the standing to raise these claims, (see: 48 C.J.S., Judges, sec. 97; *Commissioners of Drainage Dist. No. 1* v. *Goembel,* 383 Ill. 323,) it is sufficient to say we find them moot in view of the showing of the record that the matter was ultimately heard by Judge O'Sullivan upon assignment by the administrator of this court.

Plaintiff next urges that he was denied the fair and impartial trial contemplated by the constitutional guarantee of due process of law because the trial judge made a private investigation by taking judicial notice of public documents not presented in open court, because the judge was biased and prejudiced against him, and because the assistant State's Attorney appearing for defendants was elected to and assumed the office of police magistrate on or about May 1, 1963, (three days before the hearing on the motion to dismiss the amended complaint,) but nonetheless continued to represent the defendants. The first of these contentions is not supported by the record which shows

that Judge O'Sullivan, without objection by plaintiff, caused the prior decree, the pertinent appropriation ordinances and the October, 1956, resolution to be incorporated into and made a part of the record. Nor de we find substance to the charge of bias and prejudice. While the record may show some understandable impatience with counsel's persistent efforts to continue arguments after rulings had been made by the court, it likewise shows that counsel was afforded a full hearing on all matters properly raised. Finally, and without reaching the collateral question of whether the assistant State's Attorney who was elected to the office of magistrate should have withdrawn in the middle of the case, plaintiff's claim of unfairness because one member of the judiciary might be expected to favor or be reluctant to rule against another member of the judiciary borders on the ridiculous under the circumstances of this case. Furthermore, as we have pointed out, the trial court was completely correct in his finding that the amended complaint was without equity.

The decree of the circuit court of Lake County is affirmed.

Decree affirmed.

IN THE SUPREME COURT OF ILLINOIS

Docket No. 38971—Agenda 30—November, 1964.

Robert Bowman *et al.*, Appellants, v. Lake County Public Building Commission *et al.*, Appellees.

Mr. JUSTICE HOUSE delivered the opinion of the court:

This is another chapter in the litigation which has thus far prevented the construction and financing of a courthouse complex for the use of Lake County.

Plaintiff Robert Bowman filed the current taxpayers' action against the Lake County Public Building Commis-

sion and the county of Lake and its board of supervisors on November 26, 1963, the date that rehearing was denied in a practically identical suit previously instituted by him wherein we affirmed the judgment of the circuit court of Lake County striking his amended complaint, dismissing his action and denying leave to further amend. *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

The defendants here, joined by the Lake County Bar Association and its president, then sought an original writ of prohibition to prevent the circuit court from exercising jurisdiction in the present action on the ground that it was identical in principle to the first case and sought to relitigate that case and thereby nullify our decision. We denied the writ since there was no indication that the trial court intended to take any action in disregard of the decision of this court, (*People ex rel. Lake County Bar Ass'n* v. *Circuit Court of Lake County,* 31 Ill. 2d 170 (No. 38331),) and pointed out that petitioner had more appropriate remedies.

Thereafter, the Lake County Bar Association and Frank M. Daley, an individual taxpayer, were permitted to intervene in this action. They joined the defendants in an answer and counterclaim alleging that this proceeding is designed to prevent the issuance and sale of proposed revenue bonds to finance construction of the improvement, that no issue is raised that had not been raised and decided in the first case and praying that plaintiff and all the other taxpayers of the county of Lake be permanently enjoined from further prosecution of this cause and from the institution of further litigation raising any issue adjudicated in the first *Bowman* case. (29 Ill. 2d 268.) The trial court entered a decree restraining the plaintiff and all other taxpayers of the county of Lake from further prosecution of this case "and from the institution of

vexatious or harassing litigation of any issue raised and decided, or governed in principle by the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268." This appeal followed.

Plaintiffs in their reply brief assert that the counterclaim is not at issue because the trial court did not permit them to file an answer thereto. The record shows that plaintiffs filed a reply to the answer but did not file an answer to the counterclaim. They did file a motion to strike the counterclaim which was denied by the court but the record is entirely silent as to their reason for having failed to file an answer to the counterclaim.

The essence of the relief sought in the complaint is restoration of public funds granted to the commission by the county, the recovery of title to public lands transferred by the board of supervisors to the commission, a finding of unconstitutionality of the Public Building Commission Act or in the alternative, a finding of noncompliance with the valid provisions of the act, a finding that taxes levied by the county for corporate purposes in each year since 1957 are illegal and unconstitutional and praying for an injunction enjoining the defendant county and its board from accumulating excess public funds and directing a referendum to determine the amount of debt to be incurred for the erection of a courthouse.

The constitutionality of the Public Building Commission Act was upheld in *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125, and need not be further considered. However, plaintiffs additionally contend that the permanent injunction has deprived them of a full hearing guaranteed by the due-process clause of the Federal and State constitutions and that it has deprived them of their "certain remedy" guaranteed by section 19 of article II of the State constitution.

These additional charges of unconstitutionality require a comparison of the scope of the holdings in the first case with the issues which plaintiffs now seek to have decided. The plaintiffs are seeking the same relief here that they sought in the first *Bowman* case. We there fully explained that substantively and procedurally their complaint, if proved, would not warrant the relief sought. In this case they have made some adjustments in their pleadings and engaged in procedural maneuvering which they contend take this case outside the holding of the first case. We have carefully examined the record and briefs and find that the many distinctions drawn by plaintiffs between this case and the first are without a difference. To fully discuss each of the distinctions would render this opinion an argumentative repetition of the opinion in the first *Bowman* case. It is sufficient to note that the only new matters are the allegations relating to subsequent transfer of funds and the execution of a lease. As noted in the prohibition case (No. 38331) with reference to the transfer "* * * these are no different in principle from the earliest transfers and are governed by our early opinion", and with respect to the lease, "* * * it [the complaint] fails to point out in what respects the lease or the levy of the annual tax to pay the rent fails to conform to the provisions of section 14(h), (i) and (j) of the Public Building Commission Act relating to leases or section 18 providing for the levy of a tax for the payment of rental."

After the entry of the decree appealed from, Matthew Hoffman, and counsel for plaintiffs, as taxpayers, sought to file a supplemental complaint in this cause also attempting to raise the same issues, and the trial court denied leave. Upon oral motion we permitted it to be submitted as a part of the record. Ample opportunity has been afforded the plaintiffs and any other taxpayer to assert their claims and it was well within the discretion of the trial judge to deny the motion to file such supplemental complaint.

We are of the opinion that the issues in this case were disposed of in the first *Bowman* case and that plaintiffs have not been denied due process of law or their "certain remedy".

Defendants assert that the continued efforts of plaintiffs are for the purpose of harassment, which plaintiffs deny. Whether intended or not, this litigation has, in fact, been harassing and vexatious. The litigation has thus far retarded the construction of this improvement and the sale of the revenue bonds to finance it. Under these circumstances the court was amply justified in ordering the writ to issue. See 28 Am. Jur., Injunctions, sec. 210; C.J.S., Injunctions, sec. 40 h.

The decree sustaining defendants' counterclaim is affirmed. Mandate is to issue immediately.

Decree affirmed.

APPENDIX C.

COMPLAINT

Now comes the plaintiff, Robert Bowman, by his attorney, Paul E. Hamer, on behalf of himself and all other taxpayers of the County of Lake, complains of the defendants and for cause of action alleges:

COUNT I

1. That the Plaintiffs are citizens of the State of Illinois and residents of the County of Lake and subject to taxation by said County of Lake for County purposes; that at all times herein mentioned they have been and now are taxpayers of said County.

2. That at all of the times herein mentioned the Defendants were the duly qualified and acting members of

the Board of Supervisors of the County of Lake, State of Illinois and together constituted said Board; the County of Lake is a body politic of the State of Illinois; and that the members of the Lake County Building Commission were appointed and acting as the Lake County Building Commission since their appointment on or about the third day of May, 1960.

3. That on or about the 10th day of October, 1956, prior to the elimination of the office of Township Collector, the County Board of Supervisors, at a duly constituted meeting, passed the following Resolution to-wit:

> "Be It Resolved, that if and when these additional funds are available (from the elimination of the office of Township Collector), no levy shall be approved by the Board, which, when added to the balance on hand at the end of any fiscal year, plus anticipated earnings from all other sources during that year, shall produce in excess of the annual budgeted needs of Lake County."

4. That subsequent thereto, by an election held on the sixth day of November, 1956, by the vote of the majority of the electors voting at said election, the office of Township Collector was eliminated.

5. That a proposal to authorize the issuance of bonds for the purpose of erecting a new County Court House was submitted to a referendum before the electorate of said County on or about the fourth day of November, 1958, and said referendum was defeated by the majority of the electors voting at the election as aforesaid.

6. That the Lake County Board of Supervisors did on the tenth day of June, 1963, authorize or transfer the sum of $250,000 to the Lake County Public Building Com-

mission herein and that on the tenth day of September, 1963, the Lake County Board of Supervisors did authorize or transfer the sum of $250,000 to the said Commission, all pursuant to the Annual Appropriation submitted to the Lake County Board of Supervisors on the ninth day of November, 1962 and pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313).

7. That thereafter on the fourth day of October, 1963, the Lake County Board of Supervisors did enter a lease with the defendant herein under which the said County of Lake is to rent all but 499 square feet of a proposed building to be erected by the defendant herein at an annual rental fee and that pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, para. 3318), the County Clerk of Lake County has or will extend taxes against all of the taxable property in said County which will be sufficient to pay the annual rental received in the aforementioned lease.

8. That the accumulation and transfer of the sum of $500,000 to the defendant herein is a misappropriation of public funds resulting from an unnecessary accumulation of money in the public treasury which is unjust, unpolitic and against the policy of the law.

9. That the accumulation and transfer of the sum of $500,000 to the defendant herein was in contravention of the Resolution of the County Board on October 10, 1956 ordering the disbursement of public funds.

10. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is said, illegal and in contravention of the Illinois Constitution (Article Two, Section Fourteen) in that said statute impairs the obligation set forth in the Resolution of the County Board passed on October 10, 1956.

11. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is void, illegal and is in contravention of the due process of law provisions of both the State and Federal Constitutions in that the terms are indefinite and uncertain since there are no limitations placed on such grants.

12. That the transfer of said sum was a squandering of the public resources of the County of Lake, to replace which additional taxes will be required to be levied.

13. That the section of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which expressly authorizes cash grants to a commission is illegal, void and unconstitutional in that it permits taxing authorities to levy taxes designed to produce enough revenue to cover proposed grants circumventing completely all restrictions imposed by the Illinois Constitution (Article Nine, Sections 8, 9 and 12) and other applicable statutes pertaining to the levying of taxes the expenditure of public funds.

14. That on or about the seventh day of January, 1963, the plaintiffs herein filed a suit in the Circuit Court of Lake County seeking to prevent the transfer of said funds, being case number 63-27, but thereafter the Supreme Court of Illinois, in case number 38073, on or about the twenty-fifth day of October, 1963, upheld a motion to dismiss the amended complaint filed in said suit and further, that on or about the seventh day of November, 1963, the plaintiffs in said suit filed a Petition requesting a rehearing on said case.

COUNT II

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above, and further allege:

2. That on each of the following dates: December 11, 1961, May 8, 1962 and August 9, 1962, the Lake County Board of Supervisors did authorize or transfer the sum of $100,000 on each of the dates as aforesaid to the said Commission; that on the eleventh day of September, 1962, the same Lake County Board of Supervisors did authorize or transfer the sum of $150,000 to the defendant herein pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313); that on March 21, 1961 and on November 17, 1961, the Lake County Board of Supervisors did authorize or transfer the sums of $150,000 and $50,000 respectfully to the said Commission.

3. That thereafter, on the fourth day of October, 1963, the Lake County Board of Supervisors did enter a lease with the defendant herein under which the said County of Lake is to rent all but 499 square feet of a proposed building to be erected by the defendant herein at an annual rental fee and that pursuant to the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318), the County Clerk of Lake County has or will extend taxes against all of the taxable property in said County which will be sufficient to pay the annual rental received in the aforementioned lease.

4. That the accumulation and transfer of the sum of $650,000 to the defendant herein is a misappropriation of public funds resulting from an unnecessary accumulation of money in the public treasury which is unjust, unpolitic and against the policy of the law.

5. That the accumulation and transfer of the sum of $650,000 to the defendant herein was in contravention of the Resolution of the County Board on October 10, 1965 ordering the disbursement of public funds.

6. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which author-

izes such cash grants is void, illegal and in contravention of the Illinois Constitution (Article Two, Section Fourteen) in that said statute impairs the obligation set forth in the Resolution of the County Board passed on October 10, 1956.

7. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is void, illegal and is in contravention of the due process of law provisions of both the State and Federal Constitutions in that the terms are indefinite and uncertain since there are no limitations placed on such grants.

8. That the transfer of said sum was a squandering of the public resources of the County of Lake, to replace which additional taxes will be required to be levied.

9. That the section of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which expressly authorizes cash grants to a commission is illegal, void and unconstitutional in that it permits taxing authorities to levy taxes designed to produce enough revenue to cover proposed grants circumventing completely all restrictions imposed by the Illinois Constitution (Article Nine, Sections 8, 9, and 12) and other applicable statutes pertaining to the levying of taxes or the expenditure of public funds.

10. That on or about the ninth day of November, 1962, one of the plaintiffs herein, while attending a public meeting of the Lake County Board of Supervisors wherein the said Board was to consider the said Annual Appropriation and Levy Ordinance for the period from December 3, 1962 to December 1, 1963 did become aware of, for the first time, the prior cash grants by said Board to the defendants herein.

11. That prior to the ninth day of November, 1962, various Commissioners of the Commission herein, as well as members of the Lake County Board of Supervisors had stated that the proposed "7½ million dollar court house complex would cost the taxpayers nothing" and further, that the Lake County Board of Supervisors would abate the tax required to be levied under the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318).

12. That relying on these aforementioned statements plaintiffs were lulled into inaction until on or about the ninth day of November, 1962 and that thereafter plaintiffs sought legal counsel, but was unable to obtain counsel because of the refusal of local counsel to become involved in such an issue, until on or about the twenty-first day of December, 1962 when they were able to obtain the services of the counsel herein.

13. That on or about the seventh day of January, 1963 the plaintiffs herein filed a suit in the Circuit Court of Lake County, being case number 63-27 seeking the restoration of such funds.

14. That the members of the Lake County Public Building Commission knew or should have known that the statements alluded to in paragraph eleven (11) of this Count were fraudulent and made with an intent to deceive the plaintiffs since the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) requires that a tax be levied sufficient to meet the annual rental payments and that the Illinois Constitution (Article Nine, Sections 6, 9 and 10) prohibit the commutation or abatement of taxes required by law to be levied.

COUNT III

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above, and further allege:

2. That on or about the sixth day of February, 1961, the Lake County Board of Supervisors did convey by a simple quitclaim deed all interest to that parcel of land upon which the present county building is situated, as more particularly described in said deed a certified copy of which is hereby attached hereto and made a part thereof as "Exhibit A", to the said Commission herein.

3. That at the time of the conveyance as aforesaid the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313 and Para. 3314(b)) provided for said conveyance, but that the subject paragraphs of said Act were illegal, void and in contravention of the then existing statutes in that the Act permits the gift of public lands which terminates the rights of the public in and to the said public lands contrary to the public policy of this State and further, said conveyance was in contravention of the conveyancing Act (Ill. Rev. Stat., Chap. 30, Para. 157).

4. That on or about the fourth day of August, 1961, the Illinois Legislature amended both the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3314(b) but not Para. 3313) and the Conveyancing Act (Ill. Rev. Stat., Chap. 30, Para. 157) to permit a conveyance between a municipal corporation and a Building Commission provided the instrument of conveyance contains a reverter clause.

5. That the instrument of conveyance alluded to in paragraph two (2) of this Count does not contain such a reverter clause in contravention of the public policy

of this State and the Conveyancing Act prior to the amendment as aforesaid and further, that said instrument of conveyance does not contain a reverter clause now required under both the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3314(b), but not Para. 3313) and the Conveyancing Act (Ill. Rev. Stat., Chap. 30, Para. 157).

6. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3313) which permits the grants of land to the Commission is in contravention of the public policy of this State.

7. That the knowledge of facts herein alleged in this Count was not acquired by the plaintiffs herein until on or about the sixth day of February, 1963 when Counsel for the plaintiffs advised the plaintiffs of the facts as alleged herein.

8. That on or about the eleventh day of February, 1963 did file an amended Complaint in the Circuit Court of Lake County being case number 63-27, seeking a reconveyance of the property in question.

COUNT IV

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above and further allege:

2. That the plaintiffs and each of them as taxpayers have been adversely affected by the utilization of the Public Building Commission Act by the Lake County authorities and that they are seeking to compel the restoration of public monies heretofore illegally disbursed from the Lake County treasury pursuant to the Public Building Commission Act.

3. That the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3301, et seq.) is invalid, illegal, void and unconstitutional when applied to the factual situation existing in the County of Lake as more particularly hereinafter set forth.

4. That the Sheriff of Lake County is a constitutional officer charged with the operation and maintenence of the County Building under the statute relating to Sheriffs (Ill. Rev. Stat., Chap. 125, Sec. 14) and under Section 3314, Sub-paragraph (c), (f) and (m) of said Act the Public Building Commission may and the lease between the County and the Lake County Public Building Commission provides for the operation and maintenance in contravention of the Illinois Constitution and applicable case law.

5. That the Public Building Commission is illegal, void and unconstitutional in that it permits the creation of a municipal corporation in contravention of Article Eleven, Section 1 of the Illinois Constitution.

6. That the Public Building Commission is illegal, void, unconstitutional and contrary to the public policy of this State as set forth under Article Four, Sections 18 and 33 and Article Nine, Section 8 of the Illinois Constitution and the Counties Act (Ill. Rev. Stat., Chap. 34, Section 406) which establish a public policy of this State with regard to debts in excess of certain limitations and with regard to limitations on expenditures for public buildings which require a referendum and further that the Public Building Commission Act contravenes this public policy in that it permits a building and also permits the levy of a tax interest on a debt without the necessary referendum. Further, that the electorate of Lake County, in 1958, defeated a referendum calling for a bond issue of general obligation bonds in the amount of 2½ million

dollars for the purpose of erecting a court house and that thereafter the Lake County authorities created the Lake County Public Building Commission for the sole purpose of circumventing a referendum as there had been in existence since 1955 a Public Building Commission which could have been utilized by the Lake County authorities prior to said referendum.

7. That the said Act is illegal, void, invalid and unconstitutional when applied to the factual situation existing in Lake County in that it permits the accumulation and transfer of public monies in contravention of the resolution of October 10, 1958 and further, that the acceptance of public funds and lands by the defendant Commission herein sanctions a statute which impairs the obligation set forth in the resolution as aforesaid in contravention of the Illinois Constitution prohibition against impairment of contracts. And further, that the citizens of the County of Lake, relying on said Resolution, thereafter did eliminate the office of Township Collector at an election held in November, 1956.

8. That the said Act is illegal, void, invalid and unconstitutional in that it permits the grants of public land and monies (Section 3314 (b) and (1) and Section 3313 of said Act) which subjects the rights of the plaintiffs herein to the discretion of said authority without any limitations on the amount of such grants all in denial of the due process clause of the Federal and State Constitutions.

9. That the said Act is illegal, void, invalid and unconstitutional in that the General Assembly has granted powers to a municipal corporation, broader than itself possesses.

10. That the subject Act is illegal, void, invalid and unconstitutional when applied to the factual situation

existing in Lake County in that the Act is an obvious scheme or devise created by the legislature which would permit a municipal corporation to create an indebtedness in excess of the statutory or constitutional limitations without the consent of the people and further, that the Lake County authorities in an attempt to circumvent the debt limitations of Section 12 of Article Nine of the State Constitution, have declared that they intend to abate the tax required to be levied. That the declaration of abatement or commutation is for the purpose of evading the constitutional limitations set forth under Article Nine of the State Constitution or in the alternative to circumvent a referendum required by the public policy of this state and nation. And further, that the abatement of the tax, if permitted, is in contravention of Article Four, Section 23 of the Illinois Constitution. That if the underlying purpose of the Act or if the use of said Act by the Lake County Authorities is to circumvent a referendum, then the Act violates the fundamental principles of civil government to which Article Two, Section 1 and 20 of the Illinois Constitution refer.

11. That Section 3314, sub-paragraph (b) of said Act is invalid, illegal, void and unconstitutional in that it permits the Commission to acquire fee simple title to property in contravention of the public policy of this state which has declared that public property is held in trust for the benefit of the public as third-party beneficiaries.

12. That Section 3314.1 of said Act is invalid, illegal, void and unconstitutional in that it permits the Commission to pledge or mortgage public property contrary to the public policy of this State and in contravention of Section 3315 of said Act which provides that the property acquired shall be free from all liens.

13. That Section 3306 of said Act is invalid, illegal, void and unconstitutional in that it permits multiple office holding contrary to the separation of powers precept established by Article Three of the Illinois Constitution; that said section permits membership on the County Board and the Commission, positions which have been held to be incompatible and in contravention of Section Three of Article Four of the State Constitution and that the Lake County authorities have created a corporate body which is but a mere shadow of another corporate body in contravention of the constitutional precepts set forth in this paragraph.

14. That Section 3307 of said Act is illegal, void, invalid and unconstitutional in that it permits additional compensation to county officials in contravention of Article Ten, Section 10 of the Illinois Constitution and in violation of the Fees and Salaries Act (Ill. Rev. Stat., Chap. 53, Sec. 58) which provides that no county supervisors shall receive, directly or indirectly no other allowance or emolument. And further, that county supervisors while acting as members of the Commission have received such an allowance or emolument.

15. That Section 3318 of said Act is illegal, invalid, void and unconstitutional in that it permits a tax imposed for the payment of a debt not incurred by the authority imposing the tax and for the payment of which it is in nowise responsible; that since the Act in question has been construed to be in the promotion of the general welfare and safety of the State, the Act permits the imposition of a tax for the corporate purpose of the State in contravention of Article Nine, Section 10 of the State Constitution.

16. That the purpose of said Act is to circumvent the Constitutional limitations set forth in Sections Nine and Twelve of Article Nine of the Illinois Constitution.

17. That Sections 3314 and 3316 of said Act are invalid, void, illegal and unconstitutional in that they permit the Commission, acting as an arm of the State to be sued, contrary to the public policy and Article Four, Section 26 of the State Constitution.

18. That Sections 3314 (1) and 3313 of said Act are illegal, void, invalid and unconstitutional in that they permit a municipal corporation to accumulate, divert and disburse public monies from the treasury of such a municipal corporation; that said Sections permit the squandering of the resources of a municipality, to replace which taxes have been and will be required to be levied; and further, that said Sections permit the appropriation of public funds derived from taxation, all in contravention of the State Constitution and the public policy of this State and that the Lake County Board of Supervisors, while acting under the guise of the authority of these Sections have authorized the illegal disbursement or diversion of funds properly belonging to the county treasury to replace which taxes have been and will be required to be levied.

19. That Section 3314.2 of said Act is void, illegal, invalid, and unconstitutional in that it grants to said Commission the authority to grant special privileges and immunities to municipalities other than those located within the county seat, all in violation of Section 22 of Article Four of the State Constitution and is in violation of the avowed purpose of said Act as set forth in Section 3302 of said Act.

20. That Section 3318 of said Act is void, illegal, invalid and unconstitutional in that it permits the imposition of a tax upon a municipal corporation, or the inhabitants or property thereof for corporate purposes and permits the taking and selling of private property for the

payment of the corporate debts of a municipal corporation, all in contravention of Section 10 of Article Nine of the State Constitution.

21. That the Lake County authorities and the Lake County Public Building Commission, purporting to act under the said Public Building Commission Act have incurred indebtedness for which they have not provided a direct annual tax all in contravention of Section 12, Article Nine of the State Constitution.

22. That the acts of the Lake County Public Building Commission are not in accord with the purposes of the Act as set forth in Section 3302 of said Act and further, that said Commission has not acted in accordance with Section 3318 of said Act.

23. That Section 3325 of said Act is violative of Section 21 of Article Three of our constitution in that it is an attempt by the General Assembly to tell the courts how to construe a statute.

24. That said Act is illegal, void, invalid and unconstitutional in that it purports to create a municipal corporation without the constitutional separation of powers; without taking authority; and without officers who are directly elected by the people or appointed in some mode to which they have given their assent.

COUNT V

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above and further allege:

2. That since 1957 and each and every year thereafter the Lake County Board of Supervisors have appropriated and caused to be levied a tax for corporate purposes which is illegal per se and in contravention of a Resolution of

the said Board of Supervisors adopted on October 10, 1956. That said taxes for corporate purposes are illegal per se in that they were in excess of the necessary expenses of the County government; that said corporate taxes were levied in excess of the actual financial needs of said County; that said taxes for corporate purposes resulted in a wrongful accumulation of public monies, which enriched the County Treasury; that such an unnecessary accumulation in the public treasury is unjust, unpolitic and against the policy of the law of this State; that said tax levies for corporate purpose were in derogation of the Resolution passed by the Lake County Board of Supervisors on October 10, 1956; that said corporate taxes resulted in an unnecessary accumulation which is illegal; that such a corporate tax was made where there was more money on hand in the appropriate funds than was needed for the purpose during the ensuing fiscal years; that the said County Board did not consider the amount of money on hand in the treasury and in the process of collection, resulting in the levies of taxes for corporate purpose greater than the actual needs of the County; that the amount of said tax levies for corporate purposes were so excessive as to clearly indicate a fraudulent purpose; that public monies during this period have been illegally disbursed, withdrawn and withheld from the County treasury; that to replace said monies which have been disbursed, withdrawn or withheld from said County treasury, additional taxes for the same purpose, will be and have been levied; that all or part of said taxes levied for corporate purpose during the periods in question were not authorized by a valid law; and that the tax levied as a result of a lease entered into on or about the fourth day of October, 1963 between the defendants herein is for a corporate purpose and if included the tax for corporate purposes is in excess of the statute and constitu-

tional limitations without the required favorable vote at a referendum.

3. That the plaintiffs will suffer irreparable injury unless the funds heretofore transferred to the Lake County Public Building Commission are returned in that if the plaintiffs seek relief under the applicable provisions of the Revenue Act (Ill. Rev. Stat., Chap. 120, Para. 675 and 716) that additional taxes will be required to be levied to pay rebates to the taxpayers; and that the funds heretofore transferred could also be used, if returned to the County Treasury where they properly belong, to reduce tax levies for corporate purposes during the ensuing years.

4. That the plaintiffs have no adequate remedy at law in that the provisions of the Revenue Act (Ill. Rev. Stat., Chap. 120, Paras. 675 and 716) provide a means for the recovery of taxes paid on real estate only and that recovery under these sections and other applicable sections can only be had where taxes are paid in full under protest and filed with written objections and that section 716 does not provide for the recovery of illegal taxes paid on personal property; that this suit is not concerned with the assessment or collection of taxes to which section 18 of Article VI of our constitution refers; that the County Court, as of the date of this suit, is without equitable jurisdiction to compel the return of the public funds heretofore transferred to the Building Commission; that the purpose of this suit is to prevent the improper expenditure of public funds already collected; that some of the plaintiffs herein have appeared before the Lake County Board of Review in November, 1961, paid their 1961 taxes under protest in June of 1962, filed written objections in September, 1962 and as yet have to be heard on this matter, that the County Court of Lake County has

held that no tax objection matters will be heard unless an appearance is made before the Lake County Board of Review, even though the objection does not pertain to the assessed evaluation or exemption; that in the event the plaintiffs or any of them should elect to refuse to pay their real property taxes pursuant to paragraph 716 of the Revenue Act, that the mortgagees of said real property pursuant to the terms of the mortgages are empowered and would pay said delinquent tax prior to any litigation which would enable the plaintiffs to assert a valid defense against said illegal taxes; that if the plaintiffs elected to refuse to pay their real or personal property taxes, that the county authorities would force a sale of said property or obtain a court order which would serve as a cloud on said property; that certain of the plaintiffs herein have refused to pay their personal property taxes which are alleged to be illegal and that the said judgments are serving as a cloud on the title of both their real and personal property; that the remedies afforded by the Revenue Act do not apply to a taxpayer's class suit of this nature, since the individual property owners are required to file written objections; that the remedy provided for under the Revenue Act (Para. 675) if utilized by each individual taxpayer would result in a multiplicity of suits which would needlessly hamper the function of the county court; that the remedies provided for under the Revenue Act would be costly and time-consuming to all litigants and would subject the plaintiffs to a pecuniary loss thereby; that the plaintiffs have a property right in the county treasury by virtue of their past and future tax payments which is not recognized by the applicable provisions of the Revenue Act; that if the plaintiffs were to refuse to pay their real estate taxes and assert the illegality of the corporate tax as a meritorious defense to any sale of their property or in any subsequent litigation, the re-

sult would hopelessly and needlessly restrict the function of not only the county government, but all other municipalities and other taxing bodies within said county; and finally, that all distinction between the jurisdiction of the County Court and the Circuit Court has been eliminated by the combination of the lower courts into an integral court system.

COUNT VI

1. That the plaintiffs and each of them reallege and repeat and make a part of this Count, paragraphs one (1) through five (5) of Count I above and further allege;

2. That the plaintiffs and each of them have a property right in the county treasury by virtue of their past and future tax payments, which property right will be damaged if the public funds hereinafter alluded to are expended by the said Commission.

3. That based upon information and belief, that on the following dates, the County of Lake granted or authorized to be granted the sums indicated to the Lake County Public Building Commission; March 21, 1961 ($150,000), November 17, 1961 ($50,000), December 11, 1961 ($100,000), May 8, 1962 ($100,000), August 9, 1962 ($100,000) and September 11, 1962 ($150,000), or a total of $650,000.

4. That on or about the 7th day of January, 1963, the plaintiffs herein filed a suit in the Circuit Court of Lake County, being case number 63-27, to recover the sums alluded to in paragraph three (3) of this Count.

5. That upon an accounting by the said Commission, upon information and belief, that as of the 7th day of January, 1963, the said Commission had received the sum of approximately $650,000 and that said Commission had expended the sum of approximately $130,000 on various and diverse items.

6. That heretofore, and prior to the commencement of this action plaintiffs requested an examination of the records of the said Commission which under the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3310) said Commission is required to maintain and keep available to the public, but that said records were not available in the office of said Commission pursuant to the statute as aforesaid and that based upon information de hors the records of said Commission, the plaintiffs believe that said Commission has spent approximately $130,000 as of the 7th day of January, 1963.

Plaintiffs further allege that as to each and every Count hereof, the plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray that upon a final hearing hereof, that a writ of injunction be directed to issue out of the office of the clerk of this Court directing said defendant Commission and their successors in office to restore all or part of the public funds heretofore granted to it by the defendant, Lake County Board of Supervisors; that a writ of injunction be directed to issue out of the office of the clerk of this Court upon final hearing hereof directing the said defendant herein, the Lake County Public Building Commission, to recover title to the public lands heretofore transferred to it by the defendant Lake County Board of Supervisors; that this Court find that the Public Building Commission Act is unconstitutional, void, illegal and invalid when applied to the factual situation existing in the said County of Lake or in the alternative, that the defendants, and each of them, have failed to comply or act in accordance with the valid provisions of said Act; that this Court find that the taxes levied by the said County of Lake for corporate purposes since 1957 and each year thereafter to date of this suit are illegal, void, invalid and unconstitutional and that

upon final hearing hereof, a writ of injunction be directed to issue out of the office of the clerk of this Court directing the defendant,. Lake County Board of Supervisors, to retain and set-aside such sums of public monies as may be ordered to be returned by the defendant, Lake County Building Commission, and further, direct said Board to appropriate and levy an additional sum sufficient to meet the sum of money that this Court may find to have been illegally levied for corporate purposes during the period in question and that this sum, plus any sum of money directed to be returned by the defendant Commission herein be made available in a special account, to the taxpayers of Lake County for the purpose of obtaining rebates for a period of One (1) year from the date such levy and appropriation as aforesaid, after due notice by publication and personal service of such notice upon counsel for the plaintiffs herein and thereafter, that such sum that is or may be remaining in said account after the one (1) year as aforesaid be applied by the Lake County Board of Supervisors to reduce or eliminate the tax for corporate purpose which may be levied in the ensuing fiscal year or years, until the sum of money in said account shall be depleted; that upon final hearing hereof that a writ of injunction be directed to issue out of the office of the clerk of this Court directing the defendant, Lake County Board of Supervisors, to hold a referendum at a special or regular election to determine the amount of debt to be incurred by said County for the purpose of erecting a courthouse; that upon final hearing hereof that a writ of injunction be directed to issue out of the office of the clerk of this Court directing the defendants, and each of them, or ther employees, agents or representatives, to cease and desist from uttering or publishing and false, fraudulent or misleading statements calculated to deceive the citizens of Lake County regarding the cost

or who is to bear the cost, of any proposed courthouse complex; that in the event this Court should find that Section 3318 of the Public Building Commission Act is legal and valid upon final hearing that a writ of mandamus be directed to issue out of the office of the clerk of this Court compelling the defendants, Lake County Board of Supervisors, to levy and collect the direct annual tax as required by the said Act in order to prevent the proposed abatement of said tax; that upon final hearing hereof that the defendant, Lake County Public Building Commission, be ordered to account to the plaintiffs herein for all moneys and property heretofore received and disbursed by said Commission from whatever source; that upon final hearing hereof, a writ of injunction be directed to issue out of the office of the Clerk of this Court directing the defendant, Lake County Board of Supervisors, enjoining it from accumulating public funds in excess of its actual financial needs, excepting therefrom such sum as may be required to meet normal contingencies and plaintiffs, and each of them pray for such other additional or further relief as to this Court may seem meet, just, proper and equitable in the premises, with the costs and other necessary expenses incurred by the plaintiffs in this and the prior action heretofore filed in this Court.

/s/ Paul E. Hamer
Paul E. Hamer
Attorney for Plaintiffs

1900 Shermer Avenue
Northbrook, Illinois.
CR 2-1800

SUPPLEMENTAL COMPLAINT

Now comes the plaintiffs Matthew Hoffman and Paul Hamer, by their attorney, Paul E. Hamer, complaining of the defendants and for supplemental causes of action alleges:

COUNT I

1. That the plaintiff Matthew Hoffman, is a citizen of the State of Illinois and a resident and owner of both real and personal property in the County of Lake which is subject to taxation by the County of Lake, that at all times herein mentioned he has been and now is a taxpayer of said County.

2. That at all of the times herein mentioned the Defendants were the duly qualified and acting members of the Board of Supervisors of the County of Lake, State of Illinois and together constituted said Board, the County of Lake is a body politic of the State of Illinois' and that the members of the Lake County Building Commission were appointed and acting as the Lake County Building Commission since their appointment on or about the third day of May, 1960.

3. That on or about the 10th day of October, 1956, prior to the elimination of the office of Township Collector, the County Board of Supervisors, at a duly constituted meeting, passed the following Resolution, to-wit:

> "Be it Resolved, that if and when these additional funds are available (from the elimination of the office of Township Collector), no levy shall be approved by the Board, which, when added to the balance on hand at the end of any fiscal year, plus anticipated earnings from all other sources during that year, shall produce in excess of the annual budgeted needs of Lake County."'

4. That the said plaintiff in reliance on said resolution did cast his vote in the election held to eliminate the office of Township Collector on November 6, 1956.

5. That as a result of the election as aforesaid, the office of Township Collector has been eliminated.

6. That as a result of the elimination of the township collection, the County receives approximately $1,000,000.-00 per year and that the tax levied by the County of Lake for the corporate purposes yields approximately $500,-000.00 per year.

7. That pursuant to the resolution adopted on the 10th day of October, 1956, the defendant County of Lake was to use these funds realized from the elimination of the office of Township Collector to reduce the real estate tax burden of the taxpayers of Lake County.

8. That the plaintiff duly performed all of the covenants and conditions of the said agreement, but that the defendant County of Lake has failed to comply with the covenants and conditions of the said Resolution.

9. That the plaintiff has no adequate remedy at law.

Wherefore, the plaintiff prays that the Court make an appropriate decree whereby specific performance of the Resolution may be enforced and for such other, further and different relief as to the Court shall seem meet and just.

COUNT II

1. That the plaintiff, Paul E. Hamer, is a citizen of the State of Illinois and a resident and owner of both real and personal property in the County of Lake which is subject to taxation by said County; that at all times herein mentioned he has been and now is a taxpayer of said County.

2. That at all of the times herein mentioned the defendants were duly qualified and acting members of the Board of Supervisors of the County of Lake, State of Illinois and together constituted said Board; the County of Lake is a body politic of the State of Illinois; and that the members of the Lake County Building Commission were appointed and acting as the Lake County Building Commission since their appointment on or about the third day of May, 1960.

3. That he appeared before the Lake County Board of Review, that he paid his 1961 Real Estate Taxes under protest; that he filed written objections pursuant to the provisions of sections 194 and 235 of the Revenue Act (Ill. Rev. Stat., 1961, Chap. 120, pars. 675 and 716); that the matter is now pending before the Family Court Division of the Circuit Court of Lake County, being case number 660-62.

4. That the allegations therein contained are similar with regard to the legality of the taxes herein contained in Counts IV and V of the original Complaint which are hereby made a part of this paragraph by reference.

5. That at the time of filing said tax objections, the County Court was without equitable powers and could not grant the relief sought herein.

6. That suit number 660-62 is only applicable to the taxes paid for 1961 and by case law and the ruling of the State's Attorney of Lake County, no recovery can be had for the relief sought under Count V of the original Complaint, which seeks recovery of the illegal corporate taxes levied by the county of Lake since 1957.

7. That since the filing of the Complaint herein a new tax year has become effective.

8. That the plaintiff, pursuant to the suggestions of the Supreme Court in their opinion in case number 38073, would like to pay his 1963 taxes under protest and file written objections thereto, but he is unable to do so as he has not received his tax bill for said period.

9. That the plaintiff does not have an adequate remedy at law.

Wherefore, plaintiff prays that this Court find that the tax levied for corporate purposes for the years 1957 through 1962 is illegal, void and unconstitutional, and order the defendant County of Lake, to refund that portion of the money which was paid during the periods in question.

COUNT III

1. That the Plaintiff Matthew Hoffman, realleges and repeats and makes a part of this Count, paragraphs one (1) of Count I and II herein and further alleges:

2. That the Public Building Act (Ill. Rev., Chap. 34, paras. 3301, et seq) is illegal, null, void, invalid and unconstitutional in that the Act was passed by the Illinois Legislature on or about the 5th day of July, 1955; that the said Legislature had undertaken to prolong its session by the mere expedient of stopping the clock, that the regular legislative session had ended by reason of the expiration of the period fixed by law for its duration, that the legislature was functus officio and ceased to have legislative power accorded to it while in lawful session.

3. That the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Paras. 3301, et seq) is void, illegal and unconstitutional in that it is in conflict with the Counties Act (Ill. Rev. Stat., Chap. 34, Paras. 501 to 507) which provide that when the assessed taxes exceed the statutory limitation established in Para. 406 of said Act, a special

election shall be held for such purpose and further the Public Building Commission Act is in contravention of the Counties Act (Ill. Rev. Stat., Chap. 34, Para. 2151 to 2159) which require a referendum to construct a jail and sheriff's residence.

4. That the purpose of the Public Building Commission Act is to permit those counties which have exhausted their general corporate tax authority to finance capital improvements by means of a levy of a small annual tax; that the County of Lake has not exhausted their general corporate tax authority by their own admission and that the Lake County authorities are utilizing the Public Building Commission Act as a means of circumventing the referendum required by the issuance of general obligation bonds required under the Counties Act.

5. That on or about the 1st day of September, 1963, the Lake County Public Building Commission and the County of Lake entered into lease whereby the Commission was to issue revenue bonds in the principal sum of $3,500,000.00 to construct a new county office building, without courtroom facilities and that the County will pay over a period of nineteen (19) years the sum of $9,375,000.00 in rental fees to the Commission, in addition to the $1,400,000.00 heretofore accumulated and transferred to the said Commission.

6. That on or about the 10th day of September, 1963, the County Board adopted a resolution, a copy of which is attached hereto and made a part hereof as Exhibit "A", by the terms of which the tax required by the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318), will be abated.

7. That thereafter the County of Lake did appropriate, levy and transfer the sum of $250,000.00 to the Lake County Public Building Commission.

8. That the accumulation and transfer of the sum of $500,000 to the defendant herein is a misappropriation of public funds resulting from an unnecessary accumulation of money in the public treasury which is unjust, unpolitic and against the policy of the law.

9. That the accumulation and transfer of the sum of $500,000 to the defendant herein was in contravention of the Resolution of the County Board on October 10, 1956 ordering the disbursement of public funds.

10. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is void, illegal and in contravention of the Illinois Constitution (Art. Two, Sec. Fourteen) in that said statute impairs the obligation set forth in the Resolution of the County Board passed on October 10, 1956.

11. That the portion of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which authorizes such cash grants is void, illegal and is in contravention of the due process of law provisions of both the State and Federal Constitutions in that the terms are indefinite and uncertain since there are no limitations placed on such grants.

12. That the transfer of said sum was a squandering of the public resources of the County of Lake, to replace which additional taxes will be required to be levied.

13. That the section of the Public Building Commission Act (Ill. Rev. Stat., Chap. 34, Para. 3318) which expressly authorizes cash grants to a commission is illegal, void and unconstitutional in that it permits taxing authorities to levy taxes designed to produce enough revenue to cover proposed grants circumventing completely all restrictions imposed by the Illinois Constitution (Arti-

cle Nine, Sections 8, 9 and 12) and other applicable statutes pertaining to the levying of taxes as the expenditures of public funds.

14. That Section 3315 of the Public Building Commission Act provides that the rental fees are to be determined after the issuance of bonds and not prior as in the instant case.

15. That the Commissioners are not experienced in real estate management, building construction or finance as required by the Public Building Commission Act.

16. That the Commission is a mere shadow of the County Board by virtue of the appointments of the Commissioners and the resolutions and leases by and between the Lake County Public Building Commission and the County.

17. That the Public Building Act (Section 3315) provides for the maturation of the Revenue Bonds in contravention of the decision in Peo. ex rel Adamowski v. Chicago Public Building Commission, 11 Ill. 2d 125.

18. That the plaintiffs do not have an adequate remedy at law.

Wherefore, plaintiffs pray that this Court find that the Public Building Commission Act either is unconstitutional, void and illegal when applied to the factual situation in Lake County or that the defendants have failed to comply with the terms of said Act.

COUNT IV

1. That the plaintiff, Matthew Hoffman, realleges and repeats and makes a part of this Count, paragraphs one (1) of Counts I and II herein and further alleges;

2. That on or about the 1st day of September, 1963, the Lake County Board entered into a lease with the Lake County Public Building Commission, under the terms of which the County will pay a total of $9,375,000.00 in rental fees over a period of twenty (20) years.

3. That where a contract calls for the payment of annual installments an indebtedness is at once created for the aggregate of all of the installments and further said lease creates a present debt of the leasee County for the aggregate of all the rentals.

4. That Section 12 of Article IX requires municipal corporations, before incurring indebtedness, to provide for the collection of a direct annual tax sufficient to pay the principal and interest on said debt within twenty (20) years and further, that said debt shall not exceed five per centum on the value of the taxable property therein.

5. That the indebtedness created by the subject lease is an indebtedness which falls within the second proviso of Section 12 of Article IX.

6. That a reading of the Resolution of the County Board dated the 10th day of September, 1963, a copy of which is attached hereto and made a part hereof as Exhibit "A" clearly shows that the indebtedness was incurred prior to the date of this resolution since the date of the lease was September 1, 1963, that the resolution does not provide for the collection of a direct annual tax to pay the principal and interest of this indebtedness and to the contrary, abates the tax required by the Public Building Commission Act and the Illinois Constitution to be levied and that the indebtedness created by the subject lease, when added to the other legal liabilities incurred by the County of Lake is in excess of five (5) per

centum of the value of the taxable property in said County of Lake.

7. That Section 29 of Article IV of the Illinois Constitution provides that the release of a public debt is prohibited and further, that Sections 9 and 10 of Article IX of the Illinois Constitution prohibit the commutation of municipal taxes.

8. That the plaintiffs do not have an adequate remedy at law.

Wherefore, plaintiffs pray that the resolution of September 10, 1963, be declared illegal, void and unconstitutional and that the County be directed to levy the tax required by the law and the Illinois Constitution to be levied and further, a finding either that the said indebtedness is in excess of the constitutional or statutory limitations.

COUNT V

1. That the plaintiff, Matthew Hoffman, realleges and repeats and makes a part of this Count, paragraphs one (1) of Counts I and II herein and further alleges;

2. That the City of Waukegan, by Ordinance vacated that portion of Madison Street in the City of Waukegan lying between Utica and County Streets.

3. That under the Illinois Municipal Code (Ill. Rev. Stat., Chap. 24, Para. 11-91-2), the title to the vacated land belongs to the abutting owners, unless the dedication expressly provide for a specific devolution of title.

4. That pursuant to the terms of the Illinois Municipal Code, the Public Building Commission does not own a portion of the land upon which the proposed structure is to be erected since the conveyance of Court House Square to the Public Building Commission was void and

illegal and the property should revert to the original dedicator.

5. That the defendant, Lake County Public Building Commission claim or assert an interest adverse to the plaintiffs herein and that the claim of the said defendant is without any right whatever, and the said defendant has not any estate, right, title or interest whatever in said land or premises or any part thereof.

6. That the plaintiffs are without adequate remedy at law.

Wherefore, the plaintiffs pray that the defendant Lake County Public Building Commission be required to set forth the nature of their claim so that all adverse claims may be determined by a decree of this Court and for such other and further relief as to the Court shall seem meet.

COUNT VI

Now comes the people of the State of Illinois on the relation of Matthew Hoffman, petitioner, by Paul E. Hamer, his attorney, and petitions this Honorable Court to issue a writ of mandamus against the respondents County of Lake, directing it to provide by ordinance or resolution for the levy and collection of a direct annual tax as required by law and in support of said petition, avers as follows:

1. That the Petitioner is a citizen of the State of Illinois and a resident and owner of both real and personal property in the County of Lake.

2. That the respondent is a municipal corporation and body politic of the State of Illinois.

3. That on or about the 13th day of August, 1963, the respondent, a municipal corporation having the power

to levy taxes, entered into a lease with the Lake County Public Building Commission, a copy of the lease, the resolution of levy and resolution are attached hereto as Exhibit "B".

4. That the Public Building Commission Act (Ill. Rev. Stat., Chap. 24, Para. 3318) provides that whenever a municipal corporation having taxing power enters into a lease with a Public Building Commission, the governing body of such municipal corporation shall provide by ordinance or resolution for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under such lease as and when it becomes due and payable.

5. That the respondent has failed to comply with the applicable provisions of the Public Building Act and to the contrary did, on or about the 10th day of September, 1963 adopt a resolution which permits "the abatement of tax levies to pay said annual rentals" as more particularly set forth in the resolution, a copy of which is attached hereto and made a part hereof as Exhibit "A".

Wherefore, petitioner prays that a writ of mandamus be issued directed to the respondent and the governing body thereof, commanding them forthwith to adopt a resolution or ordinance for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under the terms of the lease heretofore entered into and to further direct said respondents to file a certified copy of said ordinance or resolution in the office of the County Clerk of Lake County and for such other and further relief as may be just and proper in the premises.

As to this Count, Petitioner hereby demands a trial by jury.

COUNT VII

1. That the plaintiff, Matthew Hoffman, realleges and repeats and makes a part of this Count, Paragraphs one (1), two (2) and three (3) of Count I herein and further alleges as follows;

2. That the utilization of the Public Building Commission Act by the County of Lake deprives the plaintiff of the privilege of contracting by contravening the resolution of the County Board of Supervisors on October 10, 1956 and that the denial of the privilege of contracting is a liberty and a property right within the protection of the due process clause of both the Federal and State Constitutions.

3. That the portion of the Public Building Commission Act (Section 3318) authorizing cash grants is void, illegal and in contravention of the Federal Constitution (Article I, Paragraph 10) in that said statute impairs the obligation set forth in the Resolution of the County Board passed October 10, 1956.

4. That the protection afforded by the Federal and State Constitutional provisions against the passage or adoption of laws impairing contract obligations applies to contracts entered into by municipalities with individuals which may rest in or arise out of valid ordinances or resolutions of the municipality.

5. That the Resolution of the County Board dated September 10, 1963 abating the tax to be levied under the Public Building Commission Act impairs the obligation created by the resolution of the County Board dated September 10, 1963 levying the subject tax in contravention of Article Two, Paragraph Fourteen of the Illinois Constitution and Article I, Paragraph 10 of the Federal Constitution, since the power to levy and collect under the

existing law constitutes security for the debt to be incurred and to withdraw, restrict or limit the taxing power impairs the obligation of contract for the law fixing the tax in order to pay the indebtedness constitutes part of the contract.

6. That Section 3318 of the Public Building Commission Act is invalid in that it permits the municipalities to levy taxes to produce enough revenue to permit cash grants to the Commission thereby avoiding all restrictions otherwise imposed by law upon the levying of taxes or the expenditure of public monies other than for the corporate purpose and the County Board is without authority to levy a tax for the purpose of making cash grants to the County.

7. That the lease dated on the 1st day of September, 1963 attached hereto and made a part hereof as Exhibit "B" creates a debt or burden which is the equivalent of a tax which must be collected and a debt or tax is imposed in violation of Sections 9 and 10 of Article IX of the Illinois Constitution.

8. That the Public Building Commission Act does not establish a standard to guide the public officials in making determinations as to the amounts of property or cash grants in violation of Article III of the Illinois Constitution.

9. That the amendment of the Public Building Act (Ill. Rev. Stat., Chap. 34, Secs. 3301 et seq.) and the Conveyancing Act (Ill. Rev. Stat. Chap. 30, Secs. 156 to 158) which were amended August 4, 1961 to permit conveyances between a municipality and the Public Building provided the deed of conveyance contained a reverter clause was a curative change in the statutes, but the rule is firmly established that a curative statute cannot make

valid a proceeding which was void or to cure a complete want of authority since retrospective laws are invalid where they operate to impair a vested or contractual right.

10. That Section 3313 of the Public Building Commission Act is unconstitutional as denying the due process of law provisions of both the Federal and State Constitutions in that its terms are so vague, indefinite, incomplete and uncertain.

11. That the Public Building Commission Act is invalid when applied to the factual situation existing in Lake County and is an abridgement of the due process clause of both the Federal and State Constitutions where it has taken away a property right by impairing a contract obligation.

12. That it is clear from the language of August 6, 1963 and the lease of September 1, 1963 that the Commission does and will, either directly or indirectly possess indiscriminate control or influence over the taxes to be levied by the County.

13. That on or about the 1st day of September, 1963, the County and the Commission entered into a lease; that on or about the 10th day of September, 1963 the County adopted a resolution levying a tax for the rentals to be paid to the Commission; that the cash grants to the Commission by the County heretofore made have required and will require the levy of a tax to replace these sums diverted to the Commission; that the County presently appropriates and levies for the maintenance and operation of the County Building; that under the terms of the lease, the County will be required to appropriate and levy for the same purpose; that the County continues to levy for the maintenance and operation of the building even though

the obligation has passed to the Commission; that under the terms of the lease as aforesaid the County leases all of the space under a fixed rental obligation and it may sublease all or part of the space, but it will not reduce the rental obligation of the County nor will it reduce the burden upon the taxpayers for such an item, all of which result in double taxation in violation of the due process clause of both the State and Federal Constitutions.

14. That the remedy afforded a taxpayer under Sections 194 and 235 of the Revenue Act (Ill. Rev. Stat., Chap. 120. Paras. 675 and 716) violates Article II, Section 19 of the Illinois Constitution which affords a remedy for all injuries or wrongs which a person may receive in his person or property in that the subject provisions do not apply to personal property taxes nor do they permit the recovery of illegal taxes for those years other than the one for which the taxpayer paid his taxes under protest and filed written objections and that Article II, Section 19 is a clear mandate to the courts to provide a remedy for injuries when the General Assembly has failed to provide a remedy.

15. That the plaintiff does not have an adequate remedy at law.

Wherefore, plaintiff prays that the Public Building Commission Act, as it applies to the factual situation existing in Lake County be declared to be, set aside as, unconstitutional and void, that the utilization of the Public Building Commission Act would constitute an impairment of the obligation of the contract established by the Resolution dated October 10, 1956; that the imposition of the tax required by the Act to be levied would constitute an impairment of the obligation of contract all in violation of Section 10 of Article I of the Federal Constitution

and of Article II, Section 14 of the Illinois Constitution or in the alternative, that if the subject Act is found to be constitutional, the County shall be directed to levy and collect the tax required under Section 3318 of said Act.

/s/ Paul E. Hamer
Attorney for the Plaintiffs

BLANK
PAGE

BLANK
PAGE

Office-Supreme Court, U.S.
FILED
JUN 18 1965
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 170

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and **COUNTY OF LAKE**,
Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,
Intervenor-Appellee.

MOTION TO DISMISS APPEAL

ANDREW A. SEMMELMAN,
648 N. Oakwood Avenue,
Lake Forest, Illinois,

BRUNO W. STANCZAK,
State's Attorney,
Courthouse,
Waukegan, Illinois,

SNYDER, CLARKE, DALZIEL, HOLMQUIST & JOHNSON,
301 Washington Street,
Waukegan, Illinois,

Attorneys for Defendants-Appellees and Intervenor-Appellee.

MIDWEST LAW PRINTING CO., 326 N. MICHIGAN, CHICAGO 60601, FINANCIAL 6-3988

BLANK PAGE

In the

Supreme Court of the United States

OCTOBER TERM, 1964

No.

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,
Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,
Intervenor-Appellee.

MOTION TO DISMISS APPEAL

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes Lake County Public Building Commission, a municipal corporation, County Of Lake, a body politic, Defendants-Appellees; Lake County Bar Association, an Illinois corporation not for profit, Intervenor-Appellee, by Andrew A. Semmelman, Bruno W. Stanczak, and Snyder, Clarke, Dalziel, Holmquist & Johnson, their attorneys, and present, pursuant to Rule 16, their Motion to Dismiss the above Appeal on the ground that no substantial federal question is presented and, in addition, that the judgment rests on an adequate non-federal basis.

OPINION BELOW.

The opinion of the learned trial judge is not appended to the jurisdictional statement, as required by Rule 15(h), or treated as a petition for a Writ of Certiorari, as required by Rule 23.1(i). This opinion was affirmed, without change, by the Illinois Supreme Court. It is reproduced in the appendix hereto at pages 1a to 3a.

Plaintiffs-Appellants, in their jurisdictional statement, represent that four opinions are involved. The first opinion, by the Supreme Court of Illinois, is appended to the jurisdictional statement (App., 47A-61A), but the second opinion is not. The third opinion is appended (App., 61A-65A). There was no fourth opinion.

The second opinion is reproduced in the appendix hereto at pages 4a-8a.

This second opinion stems from a Prohibition proceeding by the Lake County Bar Association and its President, the Lake County Public Building Commission, the County of Lake, and the Lake County Board of Supervisors, to prevent the Circuit Court from exercising jursdiction over the complaint filed by Plaintiffs-Appellants on the date petition for rehearing of their first suit was denied. The basis for seeking such Writ of Prohibition was that the second complaint sought to raise issues disposed of by the first opinion.

On this second suit the Supreme Court held "that the issues sought to be raised in the pending action have been litigated and disposed of by our former decision" (Supp. App. 6a). The Court considered the advisability of is-

suing the injunction of the Supreme Court to restrain the prosecution of the second suit, which raised the same issues already adjudicated, and then held, "We have concluded, however, that the matter may more appropriately be dealt with in the Circuit Court, either by a Counter-Claim for injunction in the pending case, or by an independent action for injunction."

Pursuant to this holding, a Counter-Claim for injunction was filed in the pending case from which an appeal was taken, resulting in the third opinion (App. 61A-65A), and from which Plaintiff-Appellants seek to appeal to this Court.

JURISDICTION.

No substantial federal question is presented. The judgment rests on an adequate non-federal basis.

QUESTION PRESENTED.

Did the Illinois Courts correctly enjoin Plaintiffs-Appellants from further prosecution of vexatious and harassing litigation, based on issues already raised and decided by the Illinois Supreme Court, in order to keep "litigation pending" and prevent the sale of bonds to build a much-needed public improvement?

NO STATUTE INVOLVED.

Plaintiffs-Appellants filed a class action in the State Court, appealed from an adverse decision to the State Supreme Court, which Court entered a final judgment adverse to Plaintiffs-Appellants on November 26, 1963. *No Petition for Writ of Certiorari or appeal to this Court followed.*

On November 26, 1963, the same day Plaintiffs-Appellants' petition for rehearing was denied by the State Supreme Court, another action was filed raising the same issues litigated and disposed of by the former decision. A Counter-Claim for an injunction was filed in this second suit. An injunction issued August 13, 1964 restraining Plaintiffs-Appellants from the institution or maintenance of vexatious or harassing litigation of any issue raised and decided by the State Supreme Court in the first case. The State Supreme Court found all the issues in the second case had been disposed of in the first case, and sustained the injunction issued by the Trial Court. The attempted appeal is from this order.

SUGGESTIONS IN SUPPORT.

(a) There Is No Federal Question Before This Court.

No substantial federal question is presented by the Plaintiffs-Appellants' bare allegation that a 1956 resolution of the County of Lake created a contract of a municipal corporation which was impaired by the state statute in question in contravention of Section 10 of Article 1 of the Federal Constitution. The resolution in question could not possibly be construed as more than a mere statement of intention by the County Board of Supervisors, and no law has ever been cited by Plaintiffs-Appellants to indicate such resolution could bind future Boards, or that it was in fact a contract.

Moreover, this allegation and theory was abandoned and waived in the first of these cases before the Illinois Supreme Court. (App. 59a) No appeal was taken from this final adjudication by the State Court.

(b) The Material Facts Of This Attempted Appeal.

Plaintiffs-Appellants filed a class action on January 7, 1963 to prevent the sale of revenue bonds for building a Courthouse Complex—a much-needed public improvement. The State Supreme Court sustained the action of the Trial Court in dismissing this suit, and on November 26, 1963 denied a petition for rehearing. *No appeal was taken from this final adjudication.*

In order to keep "litigation pending" and prevent the sale of these revenue bonds, Plaintiffs-Appellants filed the present suit, raising issues which the State Supreme Court found had been disposed of in the first case (App.

65a)and from which no appeal had been taken. The present appeal is a continued effort to keep "litigation pending."

(c) Plaintiffs-Appellants Had Their Day In Court.

The Jurisdictional Statement shows the Plaintiffs-Appellants herein sought to attack the Counter-Claim for injunction by a Motion to dismiss, which was denied. As indicated by the Counter-Claim (Supp. App. 9a-17a), the basis for seeking the injunction was that the Illinois Supreme Court had adjudicated the fact that the issues sought to be raised in the second action were litigated and disposed of by the first suit. This could be the only issue of fact contested by any answer filed thereto, and the highest Court of the State of Illinois had stated this was the appropriate remedy to terminate vexatious or harassing litigation. (Supp. App. 8a) Furthermore, the State Supreme Court stated in its opinion on the second appeal by Plaintiffs-Appellants herein, that this litigation was in fact harassing and vexatious. (App. 65a)

Plaintiffs-Appellants failed to include in their Appendix the order of the Trial Court entered July 24, 1964, specially setting all pending motions for August 13, 1964, as will appear from the supplementary appendix, page 18a. Pursuant to that order, Plaintiffs-Appellants' motion to dismiss the Counter-Claim was argued at great length. This motion was denied. No request was made by counsel for Plaintiffs-Appellants to further plead to the Counter-Claim, nor was any such motion ever made, and no answer of any kind to the Counter-Claim presented to the Court. The Trial Court's order of August 13, 1964 appears in the supplemental appendix pages 1a-3a.

Thus, the issuance of the injunction was in no way a deprivation of due process.

(d) No Revenue Act Is Involved.

Plaintiffs-Appellants claim the injunction "affectively (sic) precludes all taxpayers in the county from questioning the validity of their taxes." The injunction restrains "'vexatious or harassing litigation of any issue raised and decided, or governed in principle by the decision of the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268." In that opinion the Court stated that the Revenue Act provided an adequate remedy for contesting taxes (App. 54a), and reiterated that position in their decision on the request for Writ of Prohibition. (Supp. App. 6a) Thus, tax objections are clearly not barred by such injunction.

Further, Plaintiffs-Appellants in effect are asking this Honorable Court to presume that County officials will act improperly and will in the future deprive citizens of their constitutional rights. Such presumptions are not to be indulged in by any Court, and if such action should later come to pass, the citizen would have his remedy to be utilized at that time.

Plaintiffs-Appellants assert as their 4th question that they were denied due process of law when the trial Court ruled that the prior suit, which was dismissed for want of equity, barred subsequent suit. On appeal from said order, the Illinois Supreme Court stated that Plaintiffs-Appellants were seeking the same relief as in their first case and that "we there fully explained that substantively and procedurally their complaint, if proved, would not warrant the relief sought." (App. 64a) The Court then goes on to say that despite Plaintiffs-Appellants' "procedural maneuvering" there were no differences between the first and second Bowman cases.

In response to question No. 5, which does not appear to be a question arising directly from this litigation, it should be noted that Plaintiffs-Appellants are complaining of the existence of representative or class actions, which they in this continuing litigation have sought to utilize. As pointed out by the State Supreme Court, ample opportunity is afforded taxpayers in such actions to assert their individual claims. (App. 64a)

In seeking to further their own intentions in this litigation, Plaintiffs-Appellants completely disregard that at some point public bodies must be allowed to proceed with improvements deemed to be in the public interest (App. 1a and 2a). Continuous litigation which prevents such action by public bodies is, as pointed out by the Illinois Supreme Court, "harassing and vexatious." (App. 65a) Unless such public bodies can rely upon a Court ruling of constitutionality in suits which allow intervention by interested parties, there can be no end to litigation and, consequently, no progress.

WHEREFORE, the Lake County Public Building Commission, a municipal corporation, County of Lake, a body politic, Defendants-Appellees, and Lake County Bar Association, an Illinois corporation not for profit, Intervenor-Appellee, pray that this Honorable Court may dismiss this appeal.

Respectfully submitted,

LAKE COUNTY PUBLIC BUILDING COMMISSION, a municipal corporation, COUNTY OF LAKE, a body politic, LAKE COUNTY BOARD OF SUPERVISORS, and LAKE COUNTY BAR ASSOCIATION, a not-for-profit corporation,

By: ANDREW A. SEMMELMAN
BRUNO W. STANCZAK

SNYDER, CLARKE, DALZIEL, HOLMQUIST & JOHNSON

By: GERALD C. SNYDER

BLANK PAGE

BLANK
PAGE

APPENDIX "A"

State Of Illinois
County Of Lake—ss.

In The
Circuit Court Of The Nineteenth
Judicial Circuit, Lake County, Illinois

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Counter Defendants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION, a municipal corporation, COUNTY OF LAKE, a body politic, LAKE COUNTY BOARD OF SUPERVISORS, LAKE COUNTY BAR ASSOCIATION, an Illinois corporation not for profit, and FRANK M. DALY,
Defendants-Intervenors and Counterclaimants.

In Equity — General No. 63-2648

ORDER.

This cause coming on further to be heard, and the Court having considered the arguments of counsel, the various Motions presented, and all documents filed or presented, finds:

1. The Illinois Supreme Court has adjudicated the fact that the issues sought to be raised in the within action have been litigated and disposed of by the former decision of the Illinois Supreme Court in *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

2. The only new matters now presented to the Court, in addition to those alleged in the original Complaint filed herein, are the allegations as to the transfers of

funds by the County of Lake to the Public Building Commission subsequent to those alleged in the original Complaint filed herein, the constitutionality of the Public Building Commission Act and the acts of the Commission, the transfer of such funds are no different in principle from the earlier transfers and such transfers have been adjudicated to be proper, the constitutionality of the Public Building Commission Act has been adjudicated by the Illinois Supreme Court, as set forth in *The People, ex rel., Lake County Bar Association, et al.* v. *Circuit Court of Lake County, et al.,* and no matters have been raised, nor has there been an attempt to raise any matter which has not heretofore been adjudicated in principle or in fact.

3. This Court has jurisdiction to restrain the maintenance of vexatious and harassing litigation; the present litigation is vexatious and harassing, and the Plaintiffs, Robert Bowman and all other taxpayers of the County of Lake, their attorneys, agents and employees, should be restrained and enjoined from further prosecution of the pending case and from the institution or maintenance of vexatious or harassing litigation of any issue raised and decided, or governed in principle by the decision of the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

4. The Counterclaimants have no adequate remedy at law, and unless the Order and Injunction of this Court is immediately issued as prayed, irreparable injury will result to Counterclaimants; Counterclaimants are financially responsible and have assets aggregating millions of dollars, which assets are subject to the order and

(Appendix A)

direction of this Court; all parties to the Counterclaim are before this Court; the Counter Defendants are amply secured by reason of such assets, and for good cause shown an Injunction should immediately issue herein without bond.

It Is, Therefore, Adjudged And Decreed as follows:

1. That Robert Bowman, and all other taxpayers of the County of Lake, State of Illinois, their attorneys, agents and employees be, and they are hereby perpetually restrained and enjoined from further prosecution of the pending case and from the institution or maintenance of vexatious or harassing litigation of any issue raised and decided, or governed in principle by the decision of the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

2. That for good cause shown, the filing of an injunction bond be, and it is hereby waived, and this injunction be, and it is hereby declared to be immediately effective.

Enter this 13th day of August, A.D. 1964.

/s/ Charles G. Seidel
Judge

APPENDIX "B"

In The
Supreme Court Of Illinois
Docket No. 38331—June 18, 1964;
Rehearing denied September 25, 1964.

THE PEOPLE ex rel. LAKE COUNTY BAR ASSOCIATION et al.,

Petitioners,

vs.

CIRCUIT COURT OF LAKE COUNTY et al.,

Respondents.

Mr. JUSTICE UNDERWOOD delivered the opinion of the court:

In 1960, subsequent to an unsuccessful referendum on the question of issuing general obligation bonds to finance the construction of a new courthouse in Lake County, the board of supervisors formed the Lake County Public Building Commission for the purpose of constructing a new county courthouse, thereafter transferring the present courthouse land to the commission for use as a building site. Subsequent cash grants were made to the commission, and a lease was entered into between the county and the commission for rental of the courthouse space. The details of these transactions appear in our original opinion, *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

On January 7, 1963, a complaint was filed in the circuit court of Lake County by Robert Bowman, on behalf of himself and all other taxpayers of Lake County, seeking a declaratory judgment that the creation of the Lake County Building Commission was void, the enabling act unconsti-

tutional, the transfers of funds and property to the commission improper, and the tax levies illegal, and praying injunctive relief restraining the county from accumulating or transferring funds to the commission and from levying taxes claimed by plaintiff to be excessive. A motion to strike this and an amended complaint was granted, leave to further amend denied, and judgment of dismissal entered. An appeal to this court followed, and we affirmed the trial court's action. *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

On November 26, 1963, a rehearing was denied by this court, and on this same date a new complaint was filed in the Lake County Circuit Court by Bowman, representing himself and all other taxpayers, against the county, the board of supervisors and the commission. Confronted with this situation, the Lake County Bar Association, its president, Frank M. Daly, the Lake County Public Building Commission, the County of Lake and the board of supervisors thereof, filed in this court a petition for leave to file an original action of prohibition. The petition recited that the legal issues sought to be presented in the second action were identical in principle with those that had already been presented and decided by the trial court and by this court in the first case. It recited also the added inconvenience and expense that would be inflicted upon the taxpayers of the county by repeated litigation of legal contentions already decided, and it prayed for the issuance of a writ of prohibition to prevent the circuit court from exercising jurisdiction to nullify the previous decision of this court.

(Appendix B)

Leave to file the petition was granted, and the respondents, including the chief judge of the Lake County Circuit Court and Robert Bowman, have answered. We have examined the petition and the answer, and we find that no issue is raised in the second action that has not been raised and decided in the first. The only new matters in the present complaint are the allegations as to transfers of funds by the county to the commission subsequent to those alleged in the first writ and these are no different in principle from the earlier transfers and are governed by our earlier opinion. While we indicated in the first decision that no lease had been entered into between the two bodies, and no tax levied for the payment of rent, and the new complaint alleges the making of a lease, it fails to point out in what respects the lease or the levy of the annual tax to pay the rent fails to conform to the provisions of section 14(h), (i) and (j) of the Public Building Commission Act relating to leases or section 18 providing for the levy of a tax for the payment of rental. The constitutionality of those sections was previously determined. *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125; *Bowman* v. *County of Lake* 29 Ill. 2d 268.

Our earlier decision clearly pointed out that the remedy as to the asserted claim of continued over-appropriations and tax levies was by filing objections to the validity of the tax levies in question, and that excessive levies, if they existed, would not impair the validity of the revenue bonds proposed to be issued.

While we are thus of the opinion that the issues sought to be raised in the pending action have been litigated and

disposed of by our former decision, and that nothing has been asserted in the pending action that could affect the validity of the proposed revenue bonds, there is sufficient doubt as to the propriety of the proposed remedy by way of original writ of prohibition to cause us to conclude that the writ of prohibition should not issue. The principal respondents are the judges of the circuit court, and it is not suggested that they propose to do anything other than to adhere to the former decision of this court. The situation thus closely resembles that presented in *People ex rel. Modern Woodmen of America* v. *Circuit Court of Washington County,* 347 Ill. 34. There, as here, this court had already fully adjudicated in one case the issues sought to be presented in a second action filed in the circuit court. An original writ of prohibition was sought from this court, but the petition for the writ was denied, because there was no indication that the trial court intended to take action in disregard of the decision of this court. It was not until the circuit court had issued an injunction, contrary to the decision of this court, that a subsequent application for a writ of prohibition was allowed. (347 Ill. at 47, 48.)

We are of the opinion, therefore, that it is inappropriate to issue a writ of prohibition directed to the judges of the circuit court, who have indicated no disposition to exceed their jurisdiction, or to flout the rulings of this court.

While we have thus concluded that the writ of prohibition should not issue, it does not follow that petitioners are without adequate remedy. The jurisdiction of a court of equity to restrain the maintenance of vexatious or

harassing litigation is well established, (28 Am. Jur. Injunctions, sec. 210; 43 C.J.S., Injunctions, sec. 40 h.) and we have concluded that that is the appropriate remedy in the present case. In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits, apparently designed to prevent the issuance and sale of the proposed revenue bonds, we have considered the advisability of issuing the injunction of this court to restrain the prosecution of the pending case and the institution of further litigation. We have concluded, however, that the matter may move appropriately be dealt with in the circuit court, either by a counterclaim for injunction in the pending case or by an independent action for injunction. Should the imposition of such retraints result in a further appeal, the provisions of Rules 41 and 28—1 relating to expediting cases on review are available and the public interest may be safeguarded by requiring adequate security for the issuance of a *supersedeas* pending determination of the appealed issues.

Writ denied.

APPENDIX "C"

State Of Illinois
County Of Lake—ss.

In The Circuit Court Of The Nineteenth Judicial Circuit, Lake County, Illinois

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,
Plaintiffs-Counter Defendants,

vs.

LAKE COUNTY BAR ASSOCIATION, an Illinois corporation not for profit, FRANK M. DALY, LAKE COUNTY PUBLIC BUILDING COMMISSION, a municipal corporation, COUNTY OF LAKE, a body politic, and LAKE COUNTY BOARD OF SUPERVISORS,
Defendants-Counter Claimants.

In Equity — General No. 63-2648

COUNTERCLAIM

Now comes Lake County Bar Association, an Illinois corporation not for profit, Frank M. Daly, Lake County Public Building Commission, a municipal corporation, County of Lake, a body politic, and Lake County Board of Supervisors, Counter Claimants, by Snyder, Clarke, Dalziel, Holmquist & Johnson, Andrew A. Semmelman and Bruno W. Stanczak, their attorneys, and by leave of Court first had and obtained, file this their Counterclaim against Robert Bowman, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois, and counterclaiming say:

1. On January 7, 1963, a Complaint was filed in this Court by Robert Bowman, on behalf of himself and all

(Appendix C)

other taxpayers of Lake County, seeking a Declaratory Judgment that the creation of the Lake County Building Commission was void, the enabling act unconstitutional, the transfer of funds and property to the Commission improper, and the tax levied illegal, and prayed injunctive relief restraining the County from accumulating or transferring funds to the Commission, and from levying taxes claimed by Plaintiff to be excessive.

2. A Motion to Strike said Complaint and an Amended Complaint was granted, leave to further amend denied, and judgment of dismissal entered in this Court.

3. Counter Defendants appealed from the decision of this Court, briefs were filed in the Supreme Court of Illinois in connection with that appeal, and oral argument was had, and the Illinois Supreme Court affirmed the trial Court's action in *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

4. On November 26, 1963, a rehearing was denied by the Illinois Supreme Court, and on this same date the within Complaint was filed by Robert Bowman, representing himself and all other taxpayers, against the County, the Board of Supervisors and the Commission.

5. The Lake County Bar Association is an Illinois corporation not for profit; one of the purposes for which it was incorporated is to promote, improve and facilitate the administration of justice; the administration of justice in Lake County is being impeded by an inadequate "Civil War" Court house with insufficient Court rooms to house judges and provide facilities needed to meet the demand for judicial decisions; that proper administration of justice is being impeded by such inadequate facilities, and

pursuant to its corporate purposes said Lake County Bar Association filed a Motion for Leave to File Petition for Original Writ of Prohibition in the Supreme Court of Illinois prohibiting this Court taking jurisdiction of the within cause of action.

6. Counter Claimant Frank M. Daly is, and has been for more than 20 years last past, a taxpayer of the County of Lake and State of Illinois; great financial loss will result to this Counter Claimant and all other taxpayers in Lake County, Illinois by reason of the inability to put into effect building and other contracts entered into for the excavation for a new Court house complex building and the erection of same, interest charges on revenue bonds is rising, and revenue bonds cannot be sold by reason of "litigation pending," and there will be further great financial loss suffered by this Counter Claimant and all other taxpayers of Lake County, Illinois if this litigation is permitted to pend.

7. No issue is raised in the within cause of action that has not been raised and decided and the cause determined by the Illinois Supreme Court in its final adjudication in the case of *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

8. The Illinois Supreme Court in its opinion, a true and correct copy of which is attached hereto, marked "Exhibit A," held that no issue was raised in the within cause of action that was not raised and decided in the cause of action determined by the Illinois Supreme Court in *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

9. This Court has jurisdiction to restrain the maintenance of vexatious or harassing litigation; there is serious financial injury and inconvenience to the public re-

sulting from this proceeding; this proceeding was filed on the date of the denial of the Petition for Rehearing in *Bowman* v. *County of Lake*, 29 Ill. 2d 268; this proceeding is designed to prevent the issuance and sale of the proposed revenue bonds to construct a Court house complex; there is a prior adjudication of the matters and things alleged and set forth in the Complaint filed in the within cause; there is no adequate remedy at law; and an injunction should issue against the Counter Defendants as hereinafter prayed.

10. The Illinois Supreme Court, in its opinion of June 18, 1964, stated: "In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits, apparently designed to prevent the issuance and sale of the proposed revenue bonds, we have considered the advisability of issuing the injunction of this Court to restrain the prosecution of the pending case and the institution of further litigation. We have concluded, however, that the matter may more appropriately be dealt with in Circuit Court, either by a Counterclaim for injunction in the pending case, or by an independent action for injunction," as will more fully appear from "Exhibit A" attached hereto and made a part of this Counterclaim.

11. This Counterclaim is filed pursuant to said opinion of the Illinois Supreme Court.

12. That unless the Order and Injunction of this Honorable Court is immediately issued restraining Robert Bowman, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois, restraining the prosecution of the within cause and the institution of further litigation, irreparable injury will result to the Counter

(Appendix C)

Claimants herein; Counter Claimants are financially responsible and have assets aggregating millions of dollars, which assets are subject to the order and direction of this Court, all parties to this Counterclaim are before the Court, the Counter Defendants are amply secured by reason of such assets, and for good cause shown an injunction should issue herein without bond.

Wherefore Counter Claimants pray judgment as follows:

1. That this Court, by its Order, permanently enjoin and restrain Robert Bowman, and all other taxpayers of the County of Lake, State of Illinois, from prosecution of the within cause and from the institution of further litigation raising any issue adjudicated in *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

2. That said injunction may issue under Order of this Honorable Court immediately and without bond for good cause shown.

3. That Counter Claimants may have such other, further, or different relief in the premises as the Court may deem equitable and proper.

Snyder, Clarke, Dalziel, Holmquist
& Johnson
Andrew A. Semmelman
Bruno W. Stanczak
/s/ Gerald C. Snyder,
Attorneys for Defendants-Counter Claimants.

(Appendix C)

EXHIBIT A

Docket No. 38331—Agenda 12—May, 1964.

The People *ex rel* Lake County Bar Association *et al.*, Petitioners, v. Circuit Court of Lake County *et al.*, Respondents.

Mr. Justice Underwood delivered the opinion of the court:

In 1960, subsequent to an unsuccessful referendum on the question of issuing general obligation bonds to finance the construction of a new courthouse in Lake County, the board of supervisors formed the Lake County Public Building Commission for the purpose of constructing a new county courthouse, thereafter transferring the present courthouse land to the commission for use as a building site. Subsequent cash grants were made to the commission, and a lease was entered into between the county and the commission for rental of the courthouse space. The details of these transactions appear in our original opinion, *Bowman* v. *County of Lake*, 29 Ill. 2d 268.

On January 7, 1963, a complaint was filed in the circuit court of Lake County by Robert Bowman, on behalf of himself and all other taxpapers of Lake County, seeking a declaratory judgment that the creation of the Lake County Building Commission was void, the enabling act unconstitutional, the transfers of funds and property to the commission improper, and the tax levies illegal, and praying injunctive relief restraining the county from accumulating or transferring funds to the commission and from levying taxes claimed by plaintiff to be excessive. A motion to strike this and an amended complaint was granted, leave to further amend denied, and judgment of dismissal entered. An ap-

peal to this court followed, and we affirmed the trial court's action. *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

On November 26, 1963, a rehearing was denied by this court, and on this same date a new complaint was filed in the Lake County Circuit Court by Bowman, representing himself and all other taxpayers, against the county, the board of supervisors and the commission. Confronted with this situation, the Lake County Bar Association, its president, Frank M. Daly, the Lake County Public Building Commission, the County of Lake and the board of supervisors thereof, filed in this court a petition for leave to file an original action of prohibition. The petition recited that the legal issues sought to be presented in the second action were identical in principle with those that had already been presented and decided by the trial court and by this court in the first case. It recited also the added inconvenience and expense that would be inflicted upon the taxpayers of the county by repeated litigation of legal contentions already decided, and it prayed for the issuance of a writ of prohibition to prevent the circuit court from exercising jurisdiction to nullify the previous decision of this court.

Leave to file the petition was granted, and the respondents, including the chief judge of the Lake County Circuit Court and Robert Bowman, have answered. We have examined the petition and the answer, and we find that no issue is raised in the second action that has not been raised and decided in the first. The only new matters in the present complaint are the allegations as to transfers of funds by the county to the commission subsequent to those alleged in the first writ and these are no different in principle from the earlier transfers and are governed by our earlier opinion. While we indicated in the first decision that no lease had been entered into between the two bodies, and no tax levied

for the payment of rent, and the new complaint alleges the making of a lease, it fails to point out in what respects the lease or the levy of the annual tax to pay the rent fails to conform to the provisions of section 14(h), (i) and (j) of the Public Building Commission Act relating to leases or section 18 providing for the levy of a tax for the payment of rental. The constitutionality of those sections was previously determined. *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125; *Bowman* v. *County of Lake,* 29 Ill. 2d 268.

Our earlier decision clearly pointed out that the remedy as to the asserted claim of continued over-appropriations and tax levies was by filing objections to the validity of the tax levies in question, and that excessive levies, if they existed, would not impair the validity of the revenue bonds proposed to be issued.

While *we are thus of the opinion that the issues sought to be raised in the pending action have been litigated* and disposed of by our former decision, and that nothing has been asserted in the pending action that could affect the validity of the proposed revenue bonds, there is sufficient doubt as to the propriety of the proposed remedy by way of original writ of prohibition to cause us to conclude that the writ of prohibition should not issue. The principal respondents are the judges of the circuit court, and it is not suggested that they propose to do anything other than to adhere to the former decision of this court. The situation thus closely resembles that presented in *People ex rel. Modern Woodmen of America* v. *Circuit Court of Washington County,* 347 Ill. 34. There, as here, this court had already fully adjudicated in one case the issues sought to be presented in a second action filed in the circuit court. An original writ of prohibition was sought from this court, but the petition for the writ was denied, because there was no indi-

cation that the trial court intended to take action in disregard of the decision of this court. It was not until the circuit court had issued an injunction, contrary to the decision of this court, that a subsequent application for a writ of prohibition was allowed. (347 Ill. at 47, 48.)

We are of the opinion, therefore, *that it is inappropriate to issue a writ of prohibition directed to the judges of the circuit court, who have indicated no disposition to exceed their jurisdiction, or to flout the rulings of this court.*

While we have thus concluded that the writ of prohibition should not issue, it does not follow that petitioners are without adequate remedy. The jurisdiction of a court of equity to restrain the maintenance of vexatious or harassing litigation is well established, (28 Am. Jur., Injunctions, sec. 210; 43 C.J.S., Injunctions, sec. 40 h.) and *we have concluded that that is the appropriate remedy in the present case.* In view of the serious financial injury and inconvenience to the public that could result from successive lawsuits apparently designed to prevent the issuance and sale of the proposed revenue bonds, *we have considered the advisability of issuing the injunction of this court to restrain the prosecution of the pending case and the institution of further litigation.* We have concluded, however, that the *matter may move appropriately be dealt with in the circuit court,* either *by a counterclaim for injunction in the pending case* or by an independent action for injunction. Should the *imposition of such restraints result in a further appeal, the provisions of Rules 41 and 28—1 relating to expediting cases on review are available* and the public interest may be safeguarded by requiring adequate security for the issuance of a *supersedeas* pending determination of the appealed issues.

Writ denied.

APPENDIX "D"

State Of Illinois
County Of Lake—ss.

In The Circuit Court Of The Nineteenth Judicial Circuit, Lake County, Illinois

BOWMAN, etc., et. al.,

vs.

LAKE COUNTY PUBLIC BLDG. COMM. etc., et al.
Gen. No. 63-2648

ORDER

On Motion of Attorneys for the parties and the Court being advised in the premises and having heard arguments of Counsel,

It Is Ordered:

1. Hearing on all pending motions is hereby set for Thursday, August 13, 1964 at 9:30 A.M. or as soon thereafter as may be heard.

2. Depositions authorized by Separate Order herein shall be completed within One day.

3. Plaintiffs' Motions for Substitution of Parties and Amended Complaint are hereby denied.

Enter: /s/ Charles G. Seidel
Judge.

Dated at Waukegan, Illinois
this 24th day of July A.D. 1964.
Approved: /s/ P. E. Hamer
Attorney for Plaintiffs

BLANK
PAGE

BLANK PAGE

LIBRARY
SUPREME COURT, U.S.

Office Supreme Court, U.S.
FILED
JUL 6 1965
JOHN F. DAVIS, CLERK

No. 170

In the Supreme Court of the United States

OCTOBER TERM, 1964.

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,

Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,

Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,

Intervenor-Defendant-Appellee.

Appeal from the Supreme Court of the State of Illinois.

REPLY TO MOTION TO DISMISS APPEAL.

PAUL E. HAMER
1900 Shermer Avenue
Northbrook, Illinois
312-272-1800
Counsel for Plaintiffs-Appellants

The Scheffer Press, Inc., 118 South Clinton Street, Chicago, Illinois

BLANK
PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No.

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,

Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,

Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,

Intervenor-Defendant-Appellee.

Appeal from the Supreme Court of the State of Illinois.

REPLY TO MOTION TO DISMISS APPEAL.

REPLY TO MOTION TO DISMISS.

To The Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Now comes ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of

Illinois, Plaintiffs-Appellants, by Paul E. Hamer, their attorney, pursuant to the rules of this Court and in reply to the Motion to Dismiss Appeal heretofore filed by the Defendants-Appellees, repeats and realleges that the Illinois Supreme Court upheld the validity of a statute alleged to have been repugnant to the Federal Constitution and further, that said judgment does not rest on an adequate non-federal basis.

To avoid confusion, the allegations of this Reply will be set forth under each of the Headings used by the Defendants-Appellees in their Motion to Dismiss.

Opinion Below

There was no opinion of the trial judge. The order set forth in Appendix "A" of their Motion is merely a final order prepared by counsel for the Defendants-Appellees prior to the purported hearing and signed by the trial court within two minutes after it had overruled the Motion to Dismiss the Counterclaim filed by the plaintiffs.

The fourth opinion referred to by the Plaintiffs-Appellants is the opinion of the Illinois Supreme Court in *Peo. ex rel Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125. This opinion was used by the said Supreme Court as a basis for precluding any subsequent attacks on the Public Building Commission Act. In the decision appealed from, the Court states: "The constitutionality of the Public Building Commission Act was upheld in *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125, and need not be further considered" (App. 63a). It was necessary to refer to this opinion to show that the issues raised and decided in the *Adamowski* case are different than those raised in the case at bar and that at the date of the *Adamowski* decision certain portions of the Act in question were not

in existence. Therefore the Constitutional questions raised in this case could not have been considered by the Illinois Supreme Court in that decision.

The opinion set forth in the Motion to Dismiss as Appendix "B" was not a mandate to issue an injunction without a hearing, nor was the Supplemental Complaint in existence at the time of said decision.

NO STATUTE INVOLVED.

The final order of the trial court as set forth in Appendix "A" of the Motion to Dismiss clearly shows that the trial court ruled that "the constitutionality of the Public Building Commission has been adjudicated by the Illinois Supreme Court." The opinion of the Illinois Supreme Court (App. 63a) also shows that it ruled that the constitutionality of the Public Building Commission had been upheld in the *Adamowski* case and would not be considered further.

The reason for not appealing the prior decision of the Illinois Supreme Court in the first *Bowman* case is that the said Court in its opinion merely affirmed the decision of the trial court which had dismissed the action for "want of equity" and pointed out that certain necessary allegations had been omitted (App. 47a-61a). Following the specific suggestions of the Illinois Supreme Court, a new complaint was prepared supplying the necessary allegations which had been omitted. Therefore, the Plaintiffs-Appellants aver that the validity of the Public Building Act was upheld by the Illinois Supreme Court, since the said Court indicated it would not tolerate any subsequent attacks on the Act in question.

SUGGESTIONS IN SUPPORT.

(a) There Is No Federal Question Before This Court.

There were no Federal questions raised or decided by the Illinois Supreme Court in *Bowman* v. *County of Lake*, 29 Ill. 2d 268, since the Court specifically ruled that there were no Federal questions raised (App. 57a). Thus, an appeal to this Honorable Court was precluded. There were no Federal questions raised or decided by the Illinois Supreme Court in any of the cases, except the case at bar. Not only was the constitutionality of the Act upheld, but the Illinois Supreme Court also ruled that there had been no denial of due process by the action of the trial court (App. 63a).

(b) The Material Facts of This Attempted Appeal.

The Plaintiffs-Appellants must take vigorous exceptions to the statements set forth on page 5 of the Motion to Dismiss Appeal wherein counsel states that the "Plaintiffs-Appellants filed a class action on January 7, 1963 to prevent the sale of revenue bonds for building a Courthouse Complex — —." The avowed purpose of that suit was to prevent the transfer of $500,000 of public monies to the Public Building Commission and to seek the return of $650,000 of these funds theretofore transferred.

Again on page 6, the Defendants-Appellees state: "The present appeal is a continued effort to keep litigation pending." The statement is simply not true. The revenue bonds have long since been sold. If the purpose of this appeal was to prevent that sale, this appeal would be rendered futile.

(c) Plaintiffs-Appellants Had Their Day In Court.

The Plaintiffs-Appellants have not had their day in Court. At page 6 of their Motion to Dismiss, the Defendants-Appellees indicate that the burden was on the plaintiffs to file an answer. Within two minutes after the trial court struck the motion to dismiss, it signed the final order granting the permanent injunction. The issue on the counterclaim was whether or not the litigation was in fact harassing or vexatious. The Plaintiffs-Appellants were denied the opportunity to answer and to refute these unwarranted changes. The issuance of a permanent injunction without a hearing or opportunity to answer or defend against these serious charges is one of the primary reasons for this appeal.

(d) No Revenue Act Is Involved.

The Plaintiffs-Appellants do not contend the validity of the Revenue Act is involved. If a taxpayer filed a tax objection based upon "any issue raised and decided or governed in principle by the decision of the Supreme Court in *Bowman* v. *County of Lake,* 29 Ill. 2d 268" he is in violation of the injunction. However, what does the term "governed in principle" mean? Should every taxpayer be forced to run the risk of violating this injunction in order to determine the meaning of the phrase? If the words "governed in principle" are deleted from the injunction, we then may proceed with the trial of the instant case, since the issues in the instant case were not raised or decided in the prior *Bowman* case.

The applicable provisions of the Revenue Act were set forth in the appendix to show the procedure recommended by the Illinois Supreme Court in the first *Bowman* case. After that decision, the Plaintiffs-Appellants attempted to utilize this method, but the State's Attorney refused to

permit the filing of the tax objections on the grounds that the taxes had not been paid under protest and that the date for filing the objections had also passed. Also a new tax year had intervened and under Illinois Law, each tax year is a separate cause of action. The Plaintiffs-Appellants, then filed the instant suit alleging that an attempt had been made to utilize the suggested remedy and it had proven inadequate since the public monies had been transferred in spite of the suit. Further, the Illinois Law does not permit class actions be filed on tax objections, since each individual must pay the full amount of his taxes under protest and then file written objections on each individual parcel of real property. To have hundreds of thousands of taxpayers follow this procedure would unnecessarily disrupt the entire judicial system. One of the fundamental principles of equity is to utilize the courts of equity to avoid a multiplicity of suits. This is another reason why this instant case is different from the prior *Bowman* case.

The Plaintiffs-Appellants included the complaint and the supplemental complaint in the case at bar in order that this Honorable Court might examine the pleadings to determine whether or not the pleadings now state a cause of action based upon the new facts arising since the prior decision.

Motion to Dismiss Petition May Not Be Filed.

Finally, and most important, it should be noted that the Jurisdictional Statement heretofore filed by the Plaintiffs-Appellants is, in the alternative, a Petition for a Writ of Certiorari. Under Rule 24(2) of this Court, a motion to dismiss a petition for a Writ may not be filed.

WHEREFORE, ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois moves this Honorable Court to strike the Motion to Dismiss Appeal heretofore filed by the Defendants-Appellees herein.

Respectfully submitted,

PAUL E. HAMER
Counsel for the Plaintiffs-Appellants.

END